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THE GOVERNOR

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

Appointments

Appointments for December 8, 2023

Appointed as Chief Justice of the Eighth Court of Appeals, Place 1, for a term until December 31, 2024, or until his successor shall be duly elected and qualified, Jeffrey S. "Jeff" Alley (replacing Chief Justice Yvonne T. Rodriguez of El Paso, who resigned).

Appointed as Judge of the 414th Judicial District Court, McLennan County, for a term until December 31, 2024, or until his successor shall be duly elected and qualified, Ryan A. Luna of Waco, Texas (replacing Judge Vicki L. Menard of Waco, who resigned).

Appointed as Waller County Criminal District Attorney for a term until December 31, 2024, or until his successor shall be duly elected and qualified, Sean G. Whittmore of Katy, Texas (replacing Elton R. Mathis of Hempstead, who resigned).

Appointments for December 11, 2023

Appointed to the Gulf Coast Protection District Board of Directors for a term to expire June 16, 2025, Sharon D. Hulgan of Friendswood, Texas (replacing Michael D. VanDerSnick of Houston, who resigned).

Appointed to the University of North Texas System Board of Regents for a term to expire May 22, 2029, Cathy E. Bryce, Ed.D. of Argyle, Texas (replacing Mary C. Denny of Aubrey, whose term expired).

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2029, Bobbie J. Mitchell of Lewisville, Texas (replacing Edwina L. Lane of Ector, whose term expired).

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2029, Catherine A. "Cathy" Skurow of Portland, Texas (Mayor Skurow is being reappointed).

Appointments for December 12, 2023

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2029, Bryan N. Henderson, II, D.D.S of Dallas, Texas (Dr. Henderson is being reappointed).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2029, Lorie L. Jones of Magnolia, Texas (Ms. Jones is being reappointed).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2029, Sarah C. Lamb of Dallas, Texas (replacing Kathryn A. "Kaci" Sisk of Spring Branch, whose term expired).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2029, Michael B. "Brady" Morehead, D.D.S. of San Antonio, Texas (replacing Jorge E. Quirch, D.D.S. of Missouri City, whose term expired).

Appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2027, Michael Johnson of Texas City, Texas (replacing Clyde D. Loll of Huntsville, who resigned).

Designating Ronald L. "Ron" Hopping, O.D. of Friendswood as presiding officer of the Texas Optometry Board for a term to expire at the pleasure of the Governor. Dr. Hopping is replacing Mario Gutierrez, O.D. of San Antonio as presiding officer.

Appointed to the Texas Optometry Board for a term to expire January 31, 2029, Steven N. Nguyen, O.D. of Irving, Texas (replacing Mario Gutierrez, O.D. of San Antonio, whose term expired).

Appointed to the Texas Optometry Board for a term to expire January 31, 2029, Mala L. Sharma of Houston, Texas (replacing Ty H. Sheehan of San Antonio, whose term expired).

Appointed to the Texas Optometry Board for a term to expire January 31, 2029, Billy C. "Bill" Thompson, Jr., O.D. of Richardson, Texas (Dr. Thompson is being reappointed).

Appointments for December 13, 2023

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2029, Anthony E. "T.J." Klein, Jr. of College Station, Texas (replacing Keith M. Staggs of Gonzales, whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2029, Joseph G. "Joe" Osterkamp of Farwell, Texas (Mr. Osterkamp is being reappointed).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2029, Wendee L. Payne, Ph.D. of Floydada, Texas (Dr. Payne is being reappointed).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2029, Johnny E. Trotter of Hereford, Texas (replacing Leo D. Vermedahl, Ph.D. of Dalhart, whose term expired).

Appointed to the Texas State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2027, Elvira Reyna of Little Elm, Texas (replacing Evelyn Husband Thompson of Houston, who resigned).

Appointed to the TexNet Technical Advisory Committee for a term to expire at the pleasure of the Governor, Lawrence N. "Larry" French of Austin, Texas (replacing J. Calvin "Cal" Cooper, Ph.D. of Houston, who is deceased).

Greg Abbott, Governor

TRD-202304710

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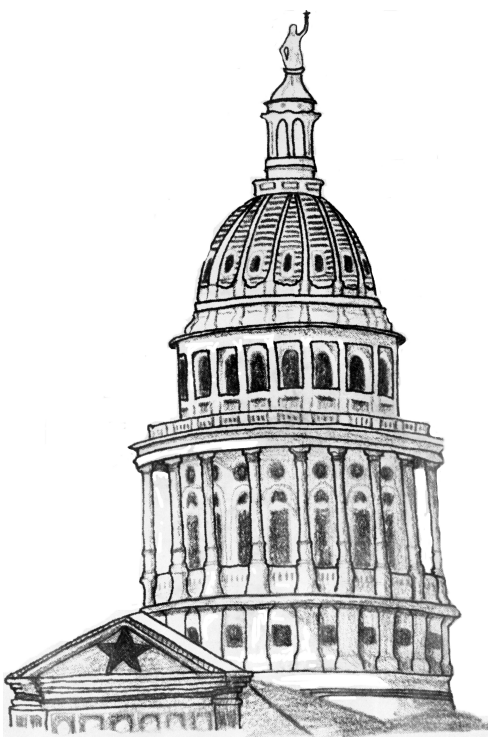

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, 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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2024 SLIHP.

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

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

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2024 SLIHP, as required by Tex. Gov't Code 2306.0723.

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2024 SLIHP.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated more germane rule that will adopt by reference the 2024 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The 32 day public comment period for the rule will be held Friday, December 22, 2023, to Monday, January 22, 2024, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email info@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, MONDAY, JANUARY 22, 2024.

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

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

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

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 December 8, 2023.

TRD-202304613
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-3959

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10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2024 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2024 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2022, through August 31, 2023).

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it is exempt under item (c)(9) because it is necessary to implement legislation. Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report. Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule. This rule provides for adherence to that statutory requirement. Further no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The proposed new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2024 SLIHP, as required by Tex. Gov't Code 2306.0723.

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

3. The proposed new rule changes do not require additional future legislative appropriations.

4. The proposed new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The proposed new rule will not expand, limit, or repeal an existing regulation.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the proposed rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the proposed rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the proposed rule will adopt by reference the 2024 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the proposed rule will adopt by reference the 2024 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the proposed rule will adopt by reference the 2024 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2024 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required

to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2024 SLIHP.

REQUEST FOR PUBLIC COMMENT. The 32 day public comment period for the rule will be held Friday December, 22, 2023, to Monday, January 22, 2024, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email info@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, MONDAY, JANUARY 22, 2024.

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

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

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (TDHCA or the Department) adopts by reference the 2024 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2024 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2024 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

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 December 8, 2023.

TRD-202304614
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-3959

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CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §8.4

The Texas Department of Housing and Community Affairs (the Department) proposes amending 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.4, Qualification Requirements for Existing Developments. The amendments will add reference to a new inspection protocol, NSPIRE, and specify what the minimum NSPIRE score must be to qualify for the 811 PRA Program as an existing development.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, existing properties qualifying for the 811 PRA Program.

2. The proposed amendment to the rule will not require a change in the number of employees of the Department;

3. The proposed amendment to the rule will not require additional future legislative appropriations;

4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed amendment to the rule will not create a new regulation, but merely revises a regulation to reference a new inspection protocol;

6. The proposed amendment to the rule will not repeal an existing regulation;

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

8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of what inspection method may be used and what the cut-off score would be for the NSPIRE inspection. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from December 22, 2023, through January 22, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, P.O. Box 13941, Austin, Texas 78711-3941, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time, January 22, 2024.

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

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

§8.4. Qualification Requirements for Existing Developments.

Eligible Existing Developments must meet all of the requirements in §8.3 of this chapter (relating to Participation as a Proposed Development). In addition, the Existing Development must meet the following requirements:

(1) The Development received an award (tax credit, direct loan, etc.) under a Department administered program in or after 2002, or has been otherwise approved by the Department in writing;

(2) The Development has at least 5 housing units;

(3) For Developments that were placed in service on or before January 1, 2020 [~~2017~~], the most current vacancy report as reflected in CMTS evidences that the Development maintained at least 85% physical occupancy for a period of at least 3 consecutive months;

(4) For Developments that have received a UPCS inspection, the Development received a UPCS score of at least 80 on its most recent Department REAC inspection and all compliance issues associated with that inspection have been resolved; or for Developments whose most recent Department inspection is an NSPIRE inspection, the Development must have received a NSPIRE score of at least 75 and all compliance issues associated with that inspection must have been resolved;

(5) The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C, or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register* 79 FR 29671; and

(6) The Development is not Transitional Housing as defined in Chapter 11 of this title [~~the 2018 Uniform Multifamily Rules~~].

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

Filed with the Office of the Secretary of State on December 8, 2023.

TRD-202304641
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-3959

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CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §§20.1 - 20.15. The purpose of the proposed action is to repeal the current rule, while replacing it with a new rule with revisions under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Department's Single Family Programs.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family Programs.

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

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

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

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

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

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed repealed chapter. Written com-

ments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

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

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

§20.1. Purpose.
§20.2. Applicability.
§20.3. Definitions.
§20.4. Eligible Single Family Activities.
§20.5. Funding Notices.
§20.6. Administrator Applicant Eligibility.
§20.7 Single Family Housing Unit Eligibility Requirements.
§20.8. Fair Housing, Waitlist Policy, Affirmative Marketing and Procedures, Housing Counseling, Denials, Notice to Applicants, Reasonable Accommodations, and Limited English Proficiency.
§20.9. Inspection Requirements for Construction Activities.
§20.10. Survey Requirements.
§20.11. Insurance and Title Requirements.
§20.12. Loan, Lien and Mortgage Requirements for Activities.
§20.13. Amendments to Written Agreements and Contracts.
§20.14. Compliance and Monitoring.
§20.15. Appeals.

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 December 8, 2023.

TRD-202304611
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-3959

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10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §§20.1 - 20.15. The purpose of the proposed new sections is to implement a more germane rule and better align administration to federal and state requirements.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family Programs.

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

3. The proposed new rule changes do not require additional future legislative appropriations.

4. The proposed new rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.

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

6. The proposed new rule will not expand or repeal an existing regulation.

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

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

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

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under Single Family Programs that are subject to the proposed new rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

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

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

The Department has evaluated the proposed new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule. Considering that participation in the Department's Single Family Programs is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

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

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

§20.1. Purpose.

This chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the Department) single family Programs, which include the Department's HOME Investment Partnerships Program (HOME), Texas Housing Trust Fund (Texas HTF), Texas Neighborhood Stabilization Program (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Chapter 2306 of the Tex. Gov't Code and any applicable statutes and federal regulations.

§20.2. Applicability.

(a) This chapter only applies to single family Programs. Program Rules may impose additional requirements related to any provision of this chapter. Where a Program Rule is less restrictive and federal law does not preempt the item, the provisions of this chapter will govern Program decisions.

(b) Activities performed under Chapter 27 (relating to Texas First Time Homebuyer Program Rule) and Chapter 28 (related to Taxable Mortgage Program) of this title are excluded from this chapter.

§20.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context indicates otherwise. Any capitalized terms not specifically defined in this section or any section referenced in this chapter shall have the meaning as defined in Chapter 2306 of the Tex. Gov't Code, the Program Rules, the Texas Administrative Code (TAC), or applicable federal regulations.

(1) Activity--The assistance provided to a specific Household or Administrator by which funds are used for acquisition, new construction, reconstruction, rehabilitation, refinance of an existing Mortgage, tenant-based rental assistance, or other Department approved Expenditure under a single family housing Program.

(2) Administrator--A unit of local government, Nonprofit Organization or other entity acting as a subrecipient, Developer, or similar organization that has an executed written Agreement with the Department.

(3) Affiliate--If, directly or indirectly, either one Controls or has the power to Control the other or a third person Controls or has the power to Control both. The Department may determine Control to include, but not be limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(4) Affiliated Party--A person or entity with a contractual relationship with the Administrator as it relates to a Program, the form of assistance under a Program, or an Activity.

(5) Affirmative Marketing Plan--HUD Form 935.2B or equivalent plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants and homebuyers who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. May be referred to as "Affirmative Fair Housing Marketing Plan" (AFHMP).

(6) Agreement--Same as "Contract." May be referred to as a "Reservation System Agreement" or "Reservation Agreement" when providing access to the Department's Reservation System as defined in this chapter.

(7) Amy Young Barrier Removal Program--A program designed to remove barriers and address immediate health and safety issues for Persons with Disabilities as outlined in the Program Rule.

(8) Annual Income--The definition of Annual Income and the methods utilized to establish eligibility for housing or other types of assistance as defined under the Program Rule.

(9) Applicant--An individual, unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department or to an Administrator an Application for Department funds or other assistance.

(10) Application--A request for a Contract award or a request to participate in a Reservation System submitted by an Applicant to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(11) Area Median Family Income (AMFI)--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program

that is used by the Department to determine the income eligibility of Households to participate in Single Family Programs.

(12) Borrower--A Household that is borrowing funds from or through the Department for the acquisition, new construction and/or rehabilitation of the Household's Principal Residence.

(13) Certificate of Occupancy--Document issued by a local authority to the owner of premises attesting that the structure has been built in accordance with building ordinances.

(14) CFR--Code of Federal Regulations.

(15) Combined Loan to Value (CLTV)--The aggregate principal balance of all the Mortgage Loans, including Forgivable Loans, divided by the appraised value.

(16) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.

(17) Concern--A policy, practice or procedure that has not yet resulted in a Finding, but if not changed will or may result in a Finding, or disallowed costs.

(18) Contract--The executed written agreement between the Department and an Administrator performing an Activity related to a single family Program that describes performance requirements and responsibilities. May also be referred to as "Agreement."

(19) Contract Term--The timeframe in which funds may be expended under the Contract or Agreement for certain administrative costs and for all the hard and soft costs of Activities, as further described in the Contract or Agreement.

(20) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of any person or entity, whether through the ownership of voting securities, ownership interests, or by contract or otherwise.

(21) Debt--A duty or obligation to pay money to a creditor, lender, or person which can include car payments, credit card bills, loans, child support payments, and student loans.

(22) Debt-to-Income Ratio--The percentage of gross monthly income from Qualifying Income that goes towards paying off Debts and is calculated by dividing total recurring monthly Debt by gross monthly income expressed as a percentage.

(23) Deobligate--The cancellation of or release of funds under a Contract or Agreement as a result of expiration of, termination of, or reduction of funds under a Contract or Agreement.

(24) Developer--Any person, general partner, Affiliate, or Affiliated Party or affiliate of a person who owns or proposes a Development or expects to acquire control of a Development and is the person responsible for performing under the Contract with the Department.

(25) Development--A residential housing project for homeownership that consists of one or more units owned by the Developer during the development period and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple units of housing that are located on scattered sites.

(26) Domestic Farm Laborer--Individuals (and the Household) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

(27) Draw Request--A request submitted to the Department, by an Administrator, seeking reimbursement of Program funds for completing an expenditure relating to the Program.

(28) Enforcement Committee--The Committee as defined in Chapter 2 of this title (relating to Enforcement).

(29) Finding--An Administrator's material failure to comply with rules, regulations, the terms of the Contract, or to provide services under a Program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and may jeopardize continued operations of the Administrator. A Finding includes the identification of an action or failure to act that results or may result in disallowed costs.

(30) Forgivable Loan--Financial assistance in the form of a Mortgage Loan that is not required to be repaid if the terms of the Mortgage Loan are met.

(31) HOME Program--A HUD funded Program authorized under the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(32) Household--One or more persons occupying a rental unit or owner-occupied Single Family Housing Unit as their primary residence. May also be referred to as a "family" or "beneficiary."

(33) Housing Contract System (HCS)--The electronic information system or systems that are part of the "central database" established by the Department to be used for tracking, funding, and reporting single family Contracts and Activities. May also be known as Contract System.

(34) HUD--The United States Department of Housing and Urban Development or its successor.

(35) Improvement Survey--A boundary survey plus land improvements by a Texas surveyor with a surveyor's seal, license number, and signature, meeting the requirements of the Texas Board of Professional Land Surveying under Chapter 663, Part 29, Title 2 of the TAC, showing (at a minimum) the accompanying legal description; all boundaries clearly labeled with calls and distance found on the ground and per the legal description; the location of all improvements, structures, visible utilities, fences, or walls; any boundary or visible encroachments; all adjoinders and recording information; location of all easements, setback lines, and utilities; or other recorded matters affecting the use of the property.

(36) Life-of-Loan Flood Certification--Tracks the flood zone of the Single Family Housing Unit for the life of the Mortgage Loan.

(37) Limited English Proficiency (LEP)--Refers to persons who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

(38) Loan Assumption--An agreement between the buyer and seller of Single Family Housing Unit that the buyer will make remaining payments and adhere to terms and conditions of an existing Mortgage Loan on the Single Family Housing Unit and Program requirements. A Mortgage Loan assumption requires written Department approval.

(39) Manufactured Housing Unit (MHU)--A structure that meets the requirements of Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code or Federal Housing Administration (FHA) guidelines as required by the Department.

(40) Mortgage--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

(41) Mortgage Loan--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

(42) Neighborhood Stabilization Program (NSP)--A HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) and Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010, as a supplemental allocation to the CDBG Program.

(43) NOFA--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a particular Program with certain requirements.

(44) Nonprofit Organization--An organization in which no part of its income is distributable to its members, directors or officers of the organization and has a current tax exemption classification status from the Internal Revenue Service in accordance with the Internal Revenue Code.

(45) Office of Colonia Initiatives--A division of the Department authorized under Chapter 2306 of Tex. Gov't Code, which acts as a liaison to the colonias and manages some Programs in the colonias.

(46) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in the collateral.

(47) Persons with Disabilities--Any person who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such an impairment; or is being regarded as having such impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, and disability as defined by other applicable federal or state law.

(48) Principal Residence--The primary Single Family Housing Unit that a Household inhabits. May also be referred to as "primary residence."

(49) Program--The specific fund source from which single family funds are applied for and used.

(50) Program Income--Gross income received by the Administrator or Affiliate directly generated from the use of single family funds, including, but not limited to gross income received from matching contributions under the HOME Program.

(51) Program Manual--A set of guidelines designed to be an implementation tool for a single family Program. A Program Manual is developed by the Department and amended or supplemented from time to time.

(52) Program Rule--Chapters of Part 1 of this title which pertain to specific single family Program requirements.

(53) Qualifying Income--The income used to calculate the Borrower's debt-to-income ratio and excludes the total of any income not received consistently for the past 12 months from the date of Application including, but not limited to, income from a full or part time job that lacks a stable job history, potential bonuses, commissions, and child support. Income received for less than 12 months such as retirement annuity or court ordered payments will be considered only if it is expected to continue at least 24 months in the foreseeable future.

(54) Reservation--Funds set-aside for a Household submitted through the Department's Reservation System.

(55) Reservation System--The Department's online tracking system that allows Administrators to reserve funds for a specific Household.

(56) Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws of the issuing organization.

(57) Reverse Mortgage--A Home Equity Conversion Mortgage insured by the FHA.

(58) Self-Help--Housing Programs that allow low-income families to build or rehabilitate their Single Family Housing Units through their own labor or volunteers.

(59) Service-Area--The geographical area where an Administrator conducts Activities under a Contract.

(60) Single Family Housing Unit--A residential dwelling designed and built for a Household to occupy as its primary residence where single family Program funds are used for rental, acquisition, construction, reconstruction or rehabilitation Activities of an attached or detached housing unit, including Manufactured Housing Units after installation. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

(61) State Median Family Income (SMI)--The median income for the state adjusted for household size and published annually by the U.S. Department of Housing and Urban Development (HUD).

(62) TAC--Texas Administrative Code.

(63) Texas Housing Trust Fund (Texas HTF)--Funding source for state-funded Programs authorized under Chapter 2306 of Tex. Gov't Code.

(64) TMCS--Texas Minimum Construction Standards.

§20.4. Eligible Single Family Activities.

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (7) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

(1) Rehabilitation or new construction of Single Family Housing Units;

(2) Reconstruction of an existing Single Family Housing Unit on the same site;

(3) Replacement of existing owner-occupied housing with a new MHU;

(4) Acquisition of Single Family Housing Units, including acquisition with rehabilitation and accessibility modifications;

(5) Refinance of an existing Mortgage or Contract for Deed mortgage;

(6) Tenant-based rental assistance; and

(7) Any other single family Activity as determined by the Department.

§20.5. Funding Notices.

(a) The Department will make funds available for eligible Administrators for single family activities through NOFAs, requests for qualifications (RFQs), request for proposals (RFPs), or other methods describing submission and eligibility guidelines and requirements.

(b) Funds may be allocated through Contract awards by the Department or by Department authority to submit Reservations.

(c) Funds may be subject to regional allocation in accordance with Chapter 2306 of the Tex. Gov't Code.

(d) Eligible Applicants must comply with the provisions of the Application materials and funding notice and are responsible for the accuracy and timely submission of all Applications and timely correction of all deficiencies.

§20.6. Administrator Applicant Eligibility.

(a) Eligible Applicants seeking to administer a single family Program are limited to entities described in the Program Rule and/or NOFA; and

(1) Shall be in good standing with the Department, Texas Secretary of State, Texas Comptroller of Public Accounts and HUD, as applicable.

(2) Shall comply with all applicable state and federal rules, statutes, or regulations including those administrative requirements in Chapters 1 and 2 of this title (relating to Administration and Enforcement).

(3) Must provide Resolutions in accordance with the applicable Program Rule.

(b) The actions described in the following paragraphs (1) - (3) of this subsection may cause an Applicant and any Applications they have submitted to administer a Single Family Program to be ineligible:

(1) Applicant did not satisfy all eligibility and/or threshold requirements described in the applicable Program Rule and NOFA;

(2) Applicant is debarred by HUD or the Department; or

(3) Applicant is currently noncompliant or has a history of noncompliance with any Department Program. Each Applicant will be reviewed by the Executive Award and Review Advisory Committee (EARAC) for its compliance history by the Department, as provided in §1.302 (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and §1.303 (relating to Executive Award and Review Advisory Committee (EARAC)) of this title. An Application submitted by an Applicant found to be in noncompliance or otherwise violating the rules of the Department may be recommended with conditions or not recommended for funding by EARAC.

(c) The Department reserves the right to adjust the amount awarded based on the Application's feasibility, underwriting analysis, the availability of funds, or other similar factors as deemed appropriate by the Department.

(d) The Department may decline to fund any Application to administer a Single Family Program if the proposed Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual components of any Application.

(e) If an Applicant/Administrator is originating or servicing a Mortgage Loan, the Applicant/Administrator must possess all licenses required under state or federal law for taking the Application of and/or servicing a residential mortgage loan and must be in good standing with respect thereto, unless Applicant/Administrator is specifically exempted from such licensure pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

§20.7. Single Family Housing Unit Eligibility Requirements.

(a) A Single Family Housing Unit must be located in the State of Texas.

(b) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current prior to the date of Mortgage Loan closing or effective date of the grant agreement. Delinquent property taxes will result in disapproval of the Activity unless one or more of the following conditions are satisfied:

(1) Household must be satisfactorily participating in an approved installment agreement in accordance with Texas Tax Code §33.02 with the taxing authority, and must be current for at least three consecutive months prior to the date of Application;

(2) Household must have qualified for an approved tax deferral plan agreement in accordance with Texas Tax Code §§33.06 or 33.065; or

(3) Household must have entered into an installment agreement under Texas Tax Code §§31.031 or 31.032, have made at least one payment under the agreement, and be current on the installment plan.

(c) A Single Family Housing Unit must not be encumbered with any liens which impair the good and marketable title as of the date of the Mortgage Loan closing or effective date of the grant agreement.

(d) Prior to any Department assistance, the owner must be current on any existing Mortgage Loans or home equity loans.

(e) Housing that is built through new construction or reconstruction must meet the requirements of Texas Gov't Code §2306.514 (relating to accessibility), 10 TAC Chapter 21 (relating to Energy Efficiency), and applicable building codes. Plans submitted for housing under new construction or reconstruction must be prepared or certified by an architect or engineer licensed by the state of Texas.

§20.8. Fair Housing, Waitlist Policy, Affirmative Marketing and Procedures, Housing Counseling, Denials, Notice to Applicants, Reasonable Accommodations, and Limited English Proficiency.

(a) Fair Housing. In addition to Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations), an Administrator must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply. Administrators receiving Federal or state funds must comply with the Age Discrimination Act of 1975.

(b) Preferences. Administrators of the Amy Young Barrier Removal Program may have a preference prioritizing Households to prevent displacement from permanent housing, or to foster returning to permanent housing related to inaccessible features of the unit.

(c) Waitlist Policy. An Administrator receiving Federal funds must have a Waitlist Policy. The Waitlist Policy must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity. The Administrator may submit a previously approved Waitlist Policy if no changes need to be made. The Waitlist Policy must be submitted at a minimum of every three years if the Administrator continues to accept new Applications. An Administrator receiving Federal funds must submit a Waitlist Policy with an Affirmative Fair Housing Marketing Plan as described in subsection (d) of this section, relating to Affirmative Marketing and Procedures.

(1) A Waitlist Policy must include any Department approved preferences used in selecting Applicants from the list. An Administrator that has defined preferences in its written waitlist procedures or tenant selection plans, as applicable, will employ preferences first and select Applicants from the waiting list that meet the defined preference, still using the neutral random selection process.

An Administrator of a federally funded Program may only request to establish preferences that are included in Department planning documents, specifically the One Year Action Plan or Consolidated Plan, or as otherwise allowed for CDBG funded Activities.

(2) An Administrator must accept Applications from possible eligible Applicants for a minimum of a 21 calendar day period. A first-come, first-served basis may not be implemented during initial selection. At the close of the minimum 21 calendar day Application acceptance period, an Administrator must select Applications through a neutral random selection process that the Administrator described in its written policies and procedures. After the Administrator has allowed for the minimum 21 calendar day period to accept Applications and has used a neutral random selection process to assist Households, the Administrator may accept Applications on a first-come, first-served basis if funds remain in the current contract or Activity type. The Director of Programs, or designee, may approve an exemption from the 21 calendar day period and the neutral random selection process for Administrators of HOME disaster set-aside Tenant Based Rental Assistance, as necessary to respond to the disaster.

(d) Affirmative Marketing and Procedures. An Administrator receiving Federal funds must have an Affirmative Fair Housing Marketing Plan (AFHMP) and satisfy the requirements of this subsection. The AFHMP must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity, and reflect marketing activities specific to the activity type. The Administrator may submit a previously approved AFHMP if no changes need to be made. The plan must be submitted at least one time in any three-year period if the Administrator continues to accept new Applications.

(1) Administrators must use the AFHMP form on the Department's website, HUD Form 935.2B, or create an equivalent AFHMP that includes:

(A) Identification of the population "least likely to apply" for the Administrator's Program(s) without special outreach efforts. Administrators may use the Department's single family affirmative marketing tool to determine populations "least likely to apply." If Administrators use another method to determine the populations "least likely to apply" the AFHMP must provide a detailed explanation of the methodology used. Persons with Disabilities must always be included as a population least likely to apply.

(B) Identification of the methods of outreach that will be used to attract persons identified as least likely to apply. Outreach methods must include identification of a minimum of three organizations with whom the Administrator plans to conduct outreach, and whose membership or clientele consists primarily of protected class members in the groups least likely to apply. If the Administrator is unable to locate three such groups, the reason must be documented in the file.

(C) Identification of the methods to be used for collection of data and periodic evaluation to determine the success of the outreach efforts. If efforts have been unsuccessful, the Administrator's AFHMP should be revised to include new or improved outreach efforts.

(D) Description of the fair housing trainings required for Administrator staff, including delivery method, training provider and frequency. For programs involved in homebuyer transactions, training must include requirements of the Fair Housing Act relating to financing and advertising, expected real estate broker conduct, as well as redlining and zoning for all programs, and discriminatory appraisal practices.

(E) A description of applicable housing counseling programs and educational materials that will be offered to Applicants. An Administrator offering any TDHCA Mortgage Loan must require that Households receive housing counseling prior to the date of the Mortgage Loan closing. Housing counseling may take place in-person or by telephone. Counseling may be provided online only if it is customized to the individual Household. Counseling must address pre- and/or post-purchase topics, as applicable to the Borrower's needs. A certificate of completion of counseling must be dated not more than 12 months prior to the date of submission of Mortgage Loan Application. Housing counseling must be provided by HUD-certified counselors working for agencies participating in HUD's Housing Counseling Program.

(2) Applicability.

(A) Affirmative marketing is required as long as an Administrator of federal funds is accepting Applications or until all dwelling units are sold in the case of single family homeownership programs.

(B) An Administrator that currently has an existing list of Applicants and is not accepting new Applications is not required to affirmatively market until preparing to accept new Applications, but must develop a plan as described in this subsection.

(C) An Administrator providing assistance in more than one Service Area must provide a separate plan for each market area in which the housing assistance will be provided.

(D) Administrators must include the Equal Housing Opportunity logo and slogan on any commercial and other media used in marketing outreach.

(E) Copies of all outreach and media ads must be kept and made available to the Department upon request.

(e) Mobility Counseling. An Administrator offering homeownership or rental assistance that allows the Household to relocate from their current residence must provide the Household access to mobility counseling. For homeownership, mobility counseling may be included in housing counseling and education trainings, and must cover the criteria noted in paragraphs (1) - (3) of this subsection.

(1) Mobility counseling must, at a minimum, include easily understandable information that the Household can use in determining areas of opportunity within a Service Area, which must at minimum include the following: which areas have lower poverty rates, average income information of different areas, school ratings, crime statistics, available area services, public transit, and other items the Administrator deems appropriate in helping the Household make informed choices when identifying housing.

(2) Mobility counseling may be offered online or in-person, and must be customized for the Household.

(3) An Administrator must collect signed certifications from Applicants acknowledging they have received mobility counseling.

(f) Denials. In the case of any Applicant's denial from a program, a letter providing the specific reason for the denial must be provided to the Applicant within fourteen calendar days of the denial. Administrators must keep a record of all denied Applicants including the basis for denial. Such records must be retained for the record retention period described by the Agreement or other sources.

(g) Notice to Applicants. Administrator must provide Applicants with eligibility criteria, which shall include the procedures for requesting a reasonable accommodation to the Administrator's rules,

policies, practices, and services, including but not limited to, as it relates to the Application process.

(h) A copy of all Reasonable Accommodation requests and the Administrator's compliant responses to such requests, in accordance with §1.204 of this title (relating to Reasonable Accommodations), must be kept as stated in §1.409 of this title (relating to Records Retention).

(i) Provisions Related to Limited English Proficiency.

(1) Administrator must have a Language Access Plan that ensures persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in services, activities, programs, and other benefits.

(2) Materials that are critical for ensuring meaningful access to an Administrator's major activities and programs, including but not limited to Applications, mortgage loan Applications, consent forms and notices of rights, should be translated for any population considered least likely to apply that meets the threshold requirements of Safe Harbor LEP provisions as provided by HUD and published on the Department's website. Materials considered critical for ensuring meaningful access should be outlined in the Administrator's Language Access Plan.

(3) The Administrator is required to translate Vital Documents under Safe Harbor guidelines, they must include in their Language Access Plan how such translation services will be provided (e.g., whether the Administrator will use voluntary or contracted qualified translation services, telephonic services, or will identify bilingual staff that will be available to assist Applicants in completing vital documents and/or accessing vital services). If the Administrator plans to use bilingual staff in its translation services, contact information for bilingual staff members must be provided.

(4) The Language Access Plan must be submitted to the Department upon request and be available for review during monitoring visits. HUD and the Department of Justice have issued requirements to ensure meaningful and appropriate access to programs for LEP individuals.

(5) Administrators must offer reasonable accommodations information and Fair Housing rights information in both English and Spanish, and other languages as required by the inclusion of "least likely to apply" groups to reach populations identified as least likely to apply.

(j) The Waitlist Policy and AFHMP, any documentation supporting the plans, and any changes made to the plans, must be kept in accordance with recordkeeping requirements for the specific Program, and in accordance with 10 TAC §1.409 (relating to Record Retention).

§20.9. Inspection Requirements for Construction Activities.

(a) The inspection requirements in this section are applicable to all construction activities, except for the Amy Young Barrier Removal Program, to the extent funded with Texas HTF.

(b) Interim inspections of construction progress are required for a Draw Request.

(c) Final inspections are required for all single family construction Activities. The inspection must document that the Activity is complete; meets all applicable codes, requirements, zoning ordinances; and has no known deficiencies related to health and safety standards. A copy of the final inspection report must be provided to the Department and to the Household.

(d) New construction requirements.

(1) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit complies with subsection (c) of this section.

(2) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

(e) Reconstruction requirements.

(1) The initial inspection must identify substandard conditions listed in TMCS along with any other health or safety concerns, unless the unit has been condemned or in the case of a HOME and CSHC Activity, the unit to be reconstructed is an MHU.

(A) A copy of the initial inspection report must be provided to the Department and to the Household as applicable. The initial inspection may be waived if the local building official certifies that the extent of the subject property's substandard conditions is beyond repair, or the property has been condemned.

(B) Substandard conditions identified in the initial inspection report must provide adequate detail to evidence the need for reconstruction.

(2) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit complies with subsection (c) of this section.

(3) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

(f) Rehabilitation requirements.

(1) Single Family Housing Units that have been condemned by the Municipality, County, or the State are not eligible for rehabilitation.

(2) The initial inspection must identify all substandard conditions listed in TMCS, along with any other health and safety concerns.

(A) A copy of the initial inspection report must be provided to the Department and to the Household.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up and cost-estimate.

(3) Final inspections must document that all substandard and health and safety issues identified in the initial inspection have been corrected. All deficient items noted on the final inspection report must be corrected prior to approval of the final Draw Request.

(4) Administrator shall meet the applicable requirements of the TMCS. Exceptions to specific provisions of TMCS may be granted in accordance with the TMCS exception request process.

(5) Correction of cosmetic issues, such as paint, wall texture, etc., will not be required if acceptable to the Program as outlined in the Program Rule, or if utilizing a Self-Help Construction Program.

(g) Inspector Requirements.

(1) Inspectors selected by the Administrator to verify compliance with this chapter must be certified by the Administrator to have

sufficient professional certifications, relevant education or experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units.

(2) Inspectors shall utilize Department-approved inspection forms, checklists, and standards when conducting inspections.

(h) The Department reserves the right to reject any inspection report if, in its sole and reasonable determination, the report does not accurately represent the property conditions or if the inspector does not meet Program requirements. All related construction costs in a rejected inspection report may be disallowed until the deficiencies are adequately cured.

§20.10. Survey Requirements.

(a) The Amy Young Barrier Removal Program is excluded from the survey requirements, to the extent funded with the Texas HTF.

(b) When Program funds are used for acquisition or construction, an Improvement Survey showing the existing improvements on the site at the time of Activity submission is required. An updated improvement survey may be required at construction completion at the discretion of the Department.

(c) If allowed by the Program Rules or NOFA, existing surveys for acquisition only activities may be used if the owner certifies that no changes were made to the footprint of any building or structure, or to any improvement on the Single Family Housing Unit, and the title company accepts the certification and survey.

(d) The Department reserves the right to determine the survey requirements on a per Activity basis if additional survey requirements would, at the sole discretion of the Department, benefit the Activity.

§20.11. Insurance and Title Requirements.

(a) The Amy Young Barrier Removal Program is excluded from this section, to the extent funded with the Texas HTF.

(b) Title Insurance Requirements. A "Mortgagee's Title Insurance Policy" is required for all Department Mortgage Loans, exclusive of subordinate lien Mortgage Loans for down payment assistance and closing costs.

(1) The title insurance policy shall be issued by an entity that is licensed and in good standing with the Texas Department of Insurance.

(2) The policy must be in the amount of the Mortgage Loan. The mortgagee named shall be: "Texas Department of Housing and Community Affairs."

(3) The policy must include survey deletion coverage.

(c) Title Reports.

(1) Title reports are acceptable only for grants.

(2) Title reports must disclose the current ownership, easements, restrictions, and liens relating to the property, and include a search for judgements, mortgages or liens, affidavits, deed restrictions, building setback and easements, and any other factors which may impair the good and marketable title to the property.

(3) The preliminary title report may not be older than six months from the date of submission of the Activity to the Department.

(d) Builder's Risk. Builder's Risk (non-reporting form only) is required when the Department provides construction funds for a Single Family Housing Unit. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(e) Hazard Insurance. If Department funds are provided in an amount that exceeds $20,000, then:

(1) The Department requires property insurance for fire and extended coverage;

(2) Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable;

(3) The amount of hazard insurance coverage should be no less than 100% of the current insurable value of improvements as of the date of Mortgage Loan closing or effective date of the grant agreement; and

(4) The Department must be named as a loss payee and mortgagee on the hazard insurance policy for any Activity receiving a Mortgage Loan from the Department.

(f) Flood Insurance. Flood insurance must be maintained for all structures located in special flood hazard areas as determined by the U.S. Federal Emergency Management Agency (FEMA).

(1) A Household may elect to obtain flood insurance even though flood insurance is not required. However, the Household may not be coerced or required to obtain flood insurance unless it is required in accordance with this section.

(2) Evidence of insurance, as required in this chapter, must be obtained prior to Mortgage Loan funding for acquisition only projects. For activities involving construction, evidence of hazard insurance must be submitted prior to Mortgage Loan funding, and evidence of flood insurance, if required, must be provided prior to payment of retainage. A one year insurance policy must be paid. For Amortizing Mortgage Loans, a minimum of two months of reserves must be collected at the closing of the Mortgage Loan. The Department must be named as the loss payee on the policy.

§20.12. Loan, Lien, and Mortgage Requirements for Activities.

(a) The fees to be paid by the Department or Borrower upfront or through the closing must be reasonable for the service rendered, in accordance with the typical fees paid in the market place for such activities and:

(1) Fees charged by third party Mortgage lenders are limited to the greater of 2% of the Mortgage Loan amount or $3,500, including but not limited to origination, loan application, and/or underwriting fees, and

(2) Fees paid to other parties that are supported by an invoice and/or reflected on the Closing Disclosure will not be included in the limit in paragraph (1) of this subsection.

(b) A Loan made by a third-party lender in conjunction with a Mortgage Loan from a federal source must be fixed-rate and may not include pre-payment penalties, balloon payments, negative amortization, or interest-only periods.

(c) Mortgage Loan Underwriting Requirements. The requirements in this subsection shall apply to all non-forgivable amortizing Mortgage Loans.

(1) Debt-to-Income Ratio. The Household's total Debt-to-Income Ratio shall not exceed 45% of Qualifying Income (unless otherwise allowed or dictated by a participating lender providing a fixed rate Mortgage Loan that is insured or guaranteed by the federal government or a conventional Mortgage Loan that adheres to the guidelines set by Fannie Mae and Freddie Mac.) A potential Borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form(s) and the deed of trust as a non-purchasing spouse. The non-purchasing spouse will not be required to execute

the note. For credit underwriting purposes all debts and obligations of the primary potential Borrower(s) and the non-purchasing spouse will be considered in the potential Borrower's total Debt-to-Income Ratio.

(2) Credit Qualifications.

(A) The Department may utilize credit reports submitted by the Administrator that are not more than 90 days old as part of the Mortgage Loan Application or may obtain tri-merge credit reports on all potential Borrowers submitted to the Department for approval at the time of Mortgage Loan Application. In addition to the initial credit report, the Department may, at its discretion, obtain one or more additional credit reports before Mortgage Loan closing to ensure the potential Borrower still meets Program requirements. Acceptable outstanding debt means that all accounts are paid as agreed and are current.

(B) Unacceptable Credit. Applicants meeting one or more of the following criteria will not be qualified to receive a single family Mortgage Program Loan from the Department:

(i) A credit history reflecting payments on any open consumer, retail and/or installment account (e.g., auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan, with the exception of a medical account) which have been delinquent for more than 30 days on two or more occasions within the last 12 months and must be current for the six months immediately preceding the date of the Mortgage Loan Application;

(ii) A foreclosure or deed-in-lieu of foreclosure or a potential Borrower in default on a mortgage at the time of the short sale any of which had occurred or been completed within the last 24 months prior to the date of Mortgage Loan Application;

(iii) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where the potential Borrower has not entered into a satisfactory repayment arrangement and been current for at least 12 months prior to the date of Mortgage Loan Application;

(iv) A court-created or court-affirmed obligation or judgment caused by nonpayment that is outstanding at the date of Mortgage Loan Application or any time prior to closing of the Mortgage Loan;

(v) Any account (with the exception of a medical account that is delinquent or has been placed for collection) that has been placed for collection, profit and loss, charged off, or repossession within the last 24 months prior to the date of Mortgage Loan Application;

(vi) Any reported delinquency on any government debt at the date of Mortgage Loan Application;

(vii) A bankruptcy that has been filed within the past 24 months prior to the date of the Mortgage Loan; or

(viii) Any reported child support payments in arrears unless the potential Borrower has evidence of having met satisfactory payment arrangements for at least 12 months prior to the date of the Mortgage Loan.

(C) Mitigation for Unacceptable Credit. The following exceptions will be considered as mitigation to the unacceptable credit criteria in subparagraph (B) of this paragraph.

(i) The potential Borrower is a Domestic Farm Laborer and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products, and has demonstrated the ability and willingness to meet debt obligations as determined by the Department.

(ii) The potential Borrower provides documentation to evidence that the outstanding delinquency or unpaid account has been paid or settled or the potential Borrower has entered into a satisfactory repayment arrangement or debt management plan and been current for at least 12 consecutive months prior to the date of Mortgage Loan.

(iii) The potential Borrower submits to the Department a written explanation of the cause for the previous delinquency, which has since been brought current and is acceptable to the Executive Director or his or her designee.

(iv) Any and all outstanding judgments must be released prior to closing of Mortgaged Loan.

(v) If a potential Borrower is currently participating in a debt management plan, and the trustee or assignee provides a letter to the Department stating they are aware and agree with the potential borrower applying for a Mortgage Loan. If a potential Borrower filed a bankruptcy, the bankruptcy must have been discharged or dismissed more than 12 months prior to the date of Mortgage Loan Application and the potential Borrower has re-established good credit with at least one existing or new active consumer account or credit account that is in good standing with no delinquencies for at least 12 months prior to the date of Mortgage Loan Application.

(vi) If a Chapter 13 Bankruptcy was filed, a potential Borrower must have satisfactorily made 12 consecutive payments and obtain court trustee's written approval to enter into Mortgage Loan.

(D) Liabilities.

(i) The potential Borrower's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than 10 monthly payments remaining. Debts for which the potential borrower is a co-signer will be included in the total monthly obligations. For payments with 10 or fewer monthly payments remaining, there shall be no late payments within the past 12 months or the debt will be included into the Debt-to-Income Ratio calculation. Payments on installment debts which are paid in full prior to the date of closing are not included for qualification purposes. Payments on all revolving debts, including credit cards, payday loans, lines of credit, unsecured loans, and installment loans that have been opened within three months of closing a prior account with the same lender will be included in the Debt-to-Income Ratio calculation, even if the potential Borrower intends to pay off the accounts, unless the account is paid in full and closed. Any revolving account with an outstanding balance but no specific minimum payment reflected on the credit report and no monthly statement showing the required monthly payment will include a payment amount calculated as the greater of 5% of the outstanding balance or $10.

(ii) if a potential Borrower provides written evidence that a debt will be deferred at least 12 months from the date of closing, the debt will not be included in the Debt-to-Income Ratio calculation. Payments on any type of loan that have been deferred or have not yet commenced, including student loans and accounts in forbearance, will be calculated using .5% of the outstanding balance or monthly payment reported on the potential Borrower's credit report, whichever is less. Other types of loans with deferred payment will be calculated using the monthly payment shown on the potential Borrower's credit report. If the credit report does not include a monthly payment for the loan, the monthly payment shown in the loan agreement or payment statement will be utilized.

(E) Equal Credit Opportunity Act. The Department and/or the Administrator on behalf of the Department will comply

with all federal and state laws and regulations relating to the extension of credit, including the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.) and its implementing regulation at 12 CFR Part 1002 (Regulation B) when qualifying potential Borrower(s) to receive a single family Mortgage Loan from the Department.

(d) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rules.

(e) Lien Position Requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan is equal to or greater than the Department's Mortgage Loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans; however, liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loans, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan.

(f) Loan Terms. All Mortgage Loan terms must meet all of the following criteria:

(1) May not exceed a term of 30 years;

(2) May not be for a term of less than five years; and

(3) Interest rate may be as low as 0% as provided in the Program Rules.

(g) Loan Assumption. A Mortgage Loan may be assumable if the Department determines the potential Borrower assuming the Mortgage Loan is eligible according to the underwriting criteria of this section and complies with all Program requirements in effect at the time of the assumption.

(h) Cash Assets. An Applicant with unrestricted cash assets in excess of $25,000 must use such excess funds towards the acquisition of the property in lieu of loan proceeds. Unrestricted cash assets for this purpose are Net Family Assets defined in 24 CFR §5.603.

(i) Appraisals.

(1) An appraisal is required by the Department on each property that is part of an acquisition Activity, except for down payment assistance only, prior to closing to determine the current market value.

(2) The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation.

(3) The Appraiser must have an active and current license by the Texas Appraisal Licensing and Certification Board.

(j) Combined Loan to Value. The Combined Loan to Value ratio of the property may not exceed 100% of the cost to acquire the property. The lien amounts of Forgivable Loans shall be included when determining the Combined Loan to Value ratio. The cost to acquire the property may exceed the appraised value only for an amount not to exceed the closing costs but in no case may result in cash back to the Borrower or exceed the limits under subsection (a) of this section.

(k) Escrow Accounts.

(1) An escrow account for real estate taxes, hazard and flood insurance premiums, and other related costs must be established if:

(A) The Department holds a first lien Mortgage Loan which is due and payable on a monthly basis to the Department; or

(B) The Department holds a subordinate Mortgage Loan and the first lien lender does not require an escrow account.

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, then the following provisions described in subparagraphs (A) - (G) of this paragraph are applicable:

(A) The Borrower must contribute monthly payments to cover the anticipated costs, as calculated by the Department, of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two months of payment reserves for hazard and/or flood insurance, and property taxes to be collected at the time of closing to establish the required amounts in the escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The Borrower will be required to deposit monthly funds to an escrow account managed by the Mortgage Loan servicer for payment of the taxes and insurance on the property. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due;

(F) These funds are included in the Borrower's monthly loan payment to the Department or to the Mortgage Loan servicer; and

(G) The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) under 12 U.S.C. §2601 and its implementing regulations at 12 CFR Part 1024 (Regulation X), as applicable.

(l) Requirements for Originating Mortgage Loans for the Department.

(1) Any person or organization originating Mortgage Loans for the Department must be properly licensed and registered as a residential mortgage loan originator in accordance with Chapters 157 and 180 of the Texas Finance Code and its implementing regulations at Chapter 81, Part 4 of Title 7 of the TAC, unless exempt from licensure or registration pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

(A) The Department reserves the right to reject any Mortgage Loan Application originated by an Administrator or individual that is not properly licensed or registered.

(B) The Department will not reimburse any expenses related to a Mortgage Loan Application received from an Administrator or individual that is not properly licensed or registered.

(2) The Department will not allow disbursement of any portion of the Department's Mortgage Loan for acquisition until seller delivers to the Borrower a fully executed deed to the property. After execution of the deed, the deed must be recorded in the records of the county where the property is located.

(3) The first monthly mortgage payment upon closing of the Mortgage Loan with monthly scheduled payments will be due one full month after the last day of the month in which the Mortgage Loan closed.

(m) Principal Residence. Loans are only permitted for potential Borrowers who will occupy the property as their Principal Residence. The property must be occupied by the potential Borrower within the later of 60 days after Mortgage Loan closing or construction completion, whichever occurs last. It must remain the Household's Principal Residence as defined in the Mortgage Loan documents or in the case of Forgivable Loans, until the forgiveness period has concluded in accordance with the Mortgage documents.

(n) Life-of-Loan Flood Certifications will be required to monitor for FEMA flood map revisions and community participation status changes for the term of the Mortgage Loan.

(o) Requirements for Subordinating to a Refinanced Loan. The Department may consent to the refinancing of the Household's superior third-party lender mortgage and execute a subordination agreement when the following conditions are met:

(1) Borrower is not refinancing into an adjustable rate mortgage;

(2) Combined loan balances do not exceed 100% of appraised value;

(3) There is no increase in principal or interest payments, with the exception made for Borrowers refinancing from a 30-year term to a shorter loan term;

(4) The Borrower will not receive any proceeds from the transaction unless it is for overpayment of Borrower's costs;

(5) All lienholders have consented to the refinancing; and

(6) In the case of Reverse Mortgages insured by the federal government (e.g. Home Equity Conversion Mortgage insured by the Federal Housing Administration), all other requirements are met.

§20.13. Amendments to Written Agreements and Contracts.

(a) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver amendments to any written Agreement or Contract that is not a Household commitment contract, provided that the requirements of this section are met unless otherwise indicated in the Program Rules.

(1) Time extensions. The Executive Director or his/her designee may grant up to a cumulative 12 months extension to the end date of any Contract unless otherwise indicated in the Program Rules. Any additional time extension beyond a cumulative 12 months granted by the Executive Director shall include a statement by the Executive Director identifying the unusual, non-foreseeable or extenuating circumstances justifying the extension. If more than a cumulative 12 months of extension is requested and the Department determines there are no unusual, non-foreseeable, or extenuating circumstances, it will be presented to the Board for approval, approval with revisions, or denial of the requested extension.

(2) Award or Contract Reductions. The Department may decrease an award for any good cause including but not limited to the request of the Administrator, insufficient eligible costs to support the award, or failure to meet deadlines or benchmarks.

(3) Changes in Households Served. Reductions in Contractual deliverables and the number of Households to be served shall require an amendment to the Contract. If such amendment is not approved, the Applicant will have the right to appeal in accordance with §1.7 of this title (relating to Appeals Process).

(4) Increases in Award and Contract Amounts.

(A) Requests for increases in funding will be evaluated by the Department on a first-come, first-served basis to assess the capacity to manage additional funding, the demonstrated need for additional funding and the ability to expend the increase in funding within the Contract Term.

(B) The considerations to approve an increase in funding shall include, at a minimum, fund availability, and Administrator's ability to continue to meet existing deadlines, benchmarks, and reporting requirements.

(C) Increases in funds may come from Program funds, Deobligated funds, or Program Income.

(D) Qualifying requests will be recommended to the Executive Director or his/her designee for approval.

(E) The Board must approve requests for increases in Program funds in excess of 25% of the original Contract amount.

(5) The Division Director may approve Contract budget amendments that move unexpended funds from one eligible cost category to another if the amendment would not have impacted the award of funds.

(6) The Division Director may approve other amendments to a Contract or an Agreement, including amendments to the Administrator's Service Area, benchmarks, or selection of Activities administered under a Contract or an Agreement, provided that the amendment would not have negatively impacted the priority of Board approved Applications.

(b) The Department may terminate a Contract in whole or in part if the Administrator does not achieve performance benchmarks as outlined in the Program Rule and/or Contract, or for any other reason in the Department's reasonable discretion.

(c) In all instances noted in this section, where an expected Mortgage Loan transaction is involved, Mortgage Loan documents will be modified accordingly at the expense of the Administrator/borrower.

§20.14. Compliance and Monitoring.

(a) The Department will perform monitoring of single family Program Contracts and Activities in order to ensure that applicable requirements of federal laws and regulations, and state laws and rules have been met, and to provide Administrators with clear communication regarding the condition and operation of these Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting obligations.

(1) The physical condition of assisted properties and Administrator's documented compliance with contractual and Program requirements may be subject to monitoring.

(2) The Department may contract with an independent third party to monitor an Activity for compliance with any conditions imposed by the Department in connection with the award of any Department funds, and appropriate state and federal laws.

(b) If an Administrator has Contracts for more than one single family Program, or other programs through the Department or the State, the Department may, at its discretion, coordinate monitoring of those programs with monitoring of single family Contracts under this chapter.

(c) In general, Administrators will be scheduled for monitoring based on federal or state monitoring requirements, or a risk assessment process including but not limited to: the number of Contracts administered by the Administrator, the amount of funds awarded and

expended, the length of time since the last monitoring, Findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Administrators will have an onsite review, and which may have a desk review.

(d) The Department will provide an Administrator with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Administrator by email to the Administrator's chief executive officer at the email address most recently provided to the Department by the Administrator. In general, a 30 calendar day notice will be provided. However, if a credible complaint of fraud is received, the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. If the Department receives a complaint under §1.2 of this title (relating to Department Complaint System to the Department), it will follow the procedures outlined therein instead of this section. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body in accordance with §1.22 of this title (relating to Providing Contact Information to the Department).

(e) Upon request, an Administrator must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review, along with access to assisted properties.

(f) Post Monitoring Procedures. After the review, a written monitoring report will be prepared for the Administrator describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Administrator. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Administrator Response. If there are any Findings and/or Concerns of noncompliance requiring corrective action, the Administrator will be provided a 30 day corrective action period, which may be extended for good cause. In order to receive an extension, the Administrator must submit a written request to the Compliance Division within the corrective action period, stating the basis for good cause that the Administrator believes justifies the extension. In general, the Department will approve or deny the extension request within three business days. Failure to timely respond to a corrective action notice and/or failure to correct all Findings will be taken into consideration if the Administrator applies for additional funding and may result in suspension of the Contract, referral to the Enforcement Committee, or other action under this title.

(h) Monitoring Close Out. After completion of the monitoring review, a close out letter will be issued to the Administrator. If the Administrator supplies evidence establishing continual compliance that negates the Finding of noncompliance, the issue of noncompliance will be rescinded. If the Administrator's response satisfies all Findings and Concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Administrator may be unable to secure documentation to resolve a Finding. In those instances, if there are mitigating circumstances, the Department may note the Finding is not resolved but may close the issue with no further action required. If the Administrator's response does not correct all Findings noted, the close out letter will identify the documentation that must be submitted to correct the issue. Results of monitoring Findings may be reported to the EARAC for consideration relating to Previous Participation.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Administrator in noncompliance, and the Administrator disagrees, the Administrator may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a federal program requirement or prohibition, Administrators may contact an applicable federal program officer for guidance, or request that the Department contact applicable federal program officer for guidance without identifying the Administrator.

(2) If the issue is related to a provision of the Contract or a requirement of the TAC, or a provision of TxGMS, the Administrator may submit an appeal to the Executive Director consistent with §1.7 of this title (relating to Appeals Process).

(3) An Administrator may request Alternative Dispute Resolution (ADR). An Administrator must send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution).

(j) If an Administrator does not respond to a monitoring letter or fails to provide acceptable evidence of timely compliance after notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, full or partial cost reimbursement, or suspension.

(k) An Administrator must provide timely response to corrective action requirements imposed by other agencies. Administrator records may be reviewed during the course of monitoring or audit of the Department by HUD, the Office of the Inspector General, the State Auditor's Office, or others. If a Finding or Concern is identified during the course of a monitoring or audit by another agency, the Administrator is required to provide timely action and response within the conditions imposed by that agency's notice.

§20.15. Appeals.

Appeal of Department staff decisions or actions will follow requirements in Program Rules and Chapter 1 of this title (relating to Administration).

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 December 8, 2023.

TRD-202304612
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-3959

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 23, Single Family HOME Program Rule, §§23.1, 23.2, 23.20 - 23.29, 23.30 - 23.32, 23.40 - 23.42, 23.50 - 23.52, 23.60 - 23.62, and 23.70 - 23.72. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

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

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Single Family HOME Program.

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

8. The proposed repeal will not negatively affect this state's economy.

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

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

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

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed repealed chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

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

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

§23.1. Applicability and Purpose.

§23.2. Definitions.

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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Bobby Wilkinson
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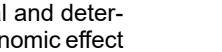

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

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

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

§23.20. Availability of Funds and Regional Allocation Formula.

§23.21. Application Forms and Materials and Deadlines.

§23.22. Contract Award Application Review Process for Open and Competitive Application Cycles.

§23.23. Reservation System Participant Review Process.

§23.24. Administrative Deficiency Process.

§23.25. General Threshold Criteria.

§23.26. Contract Benchmarks and Limitations.

§23.27. Reservation System Participant (RSP) Agreement.

§23.28. General Administrative Requirements.

§23.29. Resale and Recapture Provisions.

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 C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

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

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

§23.30. Homeowner Reconstruction Assistance (HRA) Threshold and Selection Criteria.

§23.31. Homeowner Reconstruction Assistance (HRA) General Requirements.

§23.32. Homeowner Reconstruction Assistance (HRA) Administrative 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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SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §§23.40 - 23.42

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

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

§23.40. Contract for Deed (CFD) Threshold and Selection Criteria.

§23.41. Contract for Deed (CFD) General Requirements.

§23.42. Contract for Deed (CFD) Administrative 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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SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.50 - 23.52

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

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

§23.50. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

§23.51. Tenant-Based Rental Assistance (TBRA) General Requirements.

§23.52. Tenant-Based Rental Assistance (TBRA) Administrative 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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SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.60 - 23.62

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

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

§23.60. Single Family Development (SFD) Threshold and Selection Criteria.

§23.61. Single Family Development (SFD) General Requirements.

§23.62. Single Family Development (SFD) Administrative Requirements.

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

Filed with the Office of the Secretary of State on December 8, 2023.

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SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §§23.70 - 23.72

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

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

§23.70. Homebuyer Assistance with New Construction (HANC) Threshold and Selection Criteria.

§23.71. Homebuyer Assistance with New Construction (HANC) General Requirements.

§23.72. Homebuyer Assistance with New Construction (HANC) Administrative 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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Bobby Wilkinson
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 23, Single Family HOME Program Rule consisting of §§23.1, 23.2, 23.20 - 23.29, 23.30 - 23.32, 23.40 - 23.42, 23.50 - 23.52, 23.60 - 23.62, and 23.70 - 23.72. The purpose of the proposed new chapter is to update the rule to implement a more germane rule and better align administration to state and federal requirements.

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

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

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

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

1. The proposed new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.

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

3. The proposed new rule does not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

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

6. The proposed new rule will not expand or repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family HOME Program.

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

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

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

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under the Single Family HOME Program that are subject to the proposed new rule for which the no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

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

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

The Department has evaluated the proposed new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities whom are subject to the rule for the cost of compliance with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

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

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

§23.1. Applicability and Purpose.

(a) Applicability. This Chapter governs the use and administration of all HOME single family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24 CFR Part 92, as amended. Chapter 20 of this Title relating to Single Family Programs Umbrella Rule and Chapters 1 and 2 of this Title will apply to all single family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this Chapter apply to any Application for a Contract award, or any Reservation submitted or received on or after the date of adoption of this Chapter. Existing Agreements executed within the preceding 12 months from the date of adoption of this Chapter or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this Chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this Chapter are prohibited. No amendment adopting this Chapter shall be granted if, in the discretion of the Department, any of the provisions of this Chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted. The Governing Board may waive rules subject to this Chapter for good cause to meet the purpose of the HOME Program as described further in subsection (b) of this section, provided the waiver does not conflict with the federal regulations governing the use of these funds, or impact federally imposed obligation or expenditure deadlines governing the HOME Program.

(b) Purpose. The State's HOME Program is designed to:

(1) focus on the areas with the greatest housing need described in the State Consolidated Plan;

(2) provide funds for home ownership and rental housing through acquisition, Reconstruction, New Construction, and Tenant-Based Rental Assistance;

(3) promote partnerships among all levels of government and the private sector, including nonprofit and for-profit organizations; and

(4) provide low, very low, and extremely low-income families with affordable, decent, safe, and sanitary housing.

§23.2. Definitions.

These words when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Tex. Gov't Code Chapter 2306 or Chapter 20 of this Title relating to Single Family Programs Umbrella Rule.

(1) Area Median Family Income--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of Applicants for the HOME Program, also referred to as AMFI.

(2) CFR--Code of Federal Regulations.

(3) Commitment of Funds--Occurs when the funds are awarded to an Administrator for a specific Activity approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

(4) Construction Completion Date--The Construction Completion Date shall be the date of completion of all improvements as stated on the affidavit of completion, provided that the affidavit is

filed within ten days of the stated date of completion or the date of filing as outlined in Tex Prop. Code §53.106.

(5) Date of Assistance--The date that assistance is provided to the Household. For Tenant-Based Rental Assistance, this is the start date of the rental subsidy. For Homeowner Reconstruction Assistance and Contract for Deed, this is the date of the loan closing or date of execution of grant agreement. For Single Family Development and Homebuyer Assistance with New Construction, this is the date that the Household executes the purchase agreement.

(6) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

(7) Direct Activity Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs for acquisition of real property, and rental and utility subsidy and deposits.

(8) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(9) Homeownership--Ownership in fee simple title in a one to four unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract that has not converted into a deed for title ownership.

(10) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common control, or any family relationship by virtue of blood, marriage, or adoption exists between the purchaser and the seller or lender.

(11) Match--Funds contributed to an Activity that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to an Activity does not include mortgage revenue bonds, non HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

(12) New Construction--Construction of a new Single Family Housing Unit which involves:

(A) Construction on a lot that was not the site of a Single Family Housing Unit on the date HOME assistance was requested;

(B) Construction of a new Single Family Housing Unit following acquisition; or

(C) Construction of a site-built Single Family Housing Unit that replaces a manufactured housing unit.

(13) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(14) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

(15) Predevelopment Costs--Costs consistent with 24 CFR §92.212 related to a specific eligible Activity including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(16) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(17) Reconstruction--Has the same meaning as the defined term in 24 CFR §92.2.

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

(19) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

(20) Third Party--A Person who is not:

(A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee, or developer fee.

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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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affair
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SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL

ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.20. Availability of Funds and Regional Allocation Formula.

Funds made available through an open Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide.

§23.21. Application Forms and Materials and Deadlines.

(a) The Department will produce an Application to satisfy the Department's requirements to be qualified to administer HOME activities. The Application will be available on the Department's website.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

§23.22. Contract Award Application Review Process for Open Application Cycles.

An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies under §23.24 of this Chapter, may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

§23.23. Reservation System Participant Review Process.

An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under Chapter 1, Subchapter C of this Title, as amended or superseded, concerning Previous Participation and the Executive Award and Review Advisory Committee, and not denied under §23.24 of this Chapter, will be drafted and processed in the order in which it was accepted to be executed and made effective.

§23.24. Administrative Deficiency Process.

(a) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses must be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may, in good faith, provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Executive Director or authorized designee, and Board, as applicable.

(b) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(c) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., central time, on the 14th day following the date of the deficiency notice, the application may be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply.

§23.25. General Threshold Criteria.

(a) General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) An Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application.

(2) A Resolution from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application specifying the NOFA under which funds are requested for Contract award Applications;

(B) Commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) Source of funds for Match obligation and Match amount to be contributed as a percentage of Direct Activity Costs, if applicable;

(D) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated; and

(E) Date that the resolution was passed by the governing body, which must be within six months preceding Application submission for Reservation System Participation Agreement Applications, and no earlier than the date of the Department's Governing Board approval of the NOFA for Contract award Applications.

(3) An Applicant must be registered in the System for Award Management (SAM) and have a current Unique Entity Identification (UEID) number.

(4) An Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application.

§23.26. Contract Benchmarks and Limitations.

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

(b) Contract Award Terms. Homeowner Reconstruction Assistance awards will have a Contract term of not more than 21 months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than 24 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than 36 months.

(c) Contract Award Benchmarks. Administrators must have attained environmental clearance for the contractually required number of Households served within six months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with Chapter 1 of this Title relating to Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs.

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract awards will be processed in accordance with Chapter 20 of this Title, relating to Single Family Programs Umbrella Rule.

§23.27. Reservation System Participant (RSP) Agreement.

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

(b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to 30 at any given time.

(c) Extremely Low-Income Households. Except for Households submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent AMFI for the county in which they will reside or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance.

(e) Completion of Construction. For Activities involving construction, construction must be complete within 12 months from the Commitment of Funds for the Activity, unless amended in accordance with subsection (g) of this section.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the Household commitment contract term for Tenant-Based Rental Assistance may not exceed 24 months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.

(g) Amendments to Household commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that extends the term of a Household commitment contract by not more than six months, except that the term of a Household commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total Household commitment contract term of 24 months.

(2) The Executive Director's authorized designee may approve one or more amendments to a Household commitment contract to:

(A) extend the Construction Completion Date by not more than six months;

(B) extend the term of rental subsidy up to a total term of 24 months;

(C) extend the draw period by not more than three months after the Construction Completion Date or termination of rental subsidy; or

(D) to increase Activity funds within the limitations set forth in this Chapter.

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

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six months prior to the effective date of the RSP Agreement.

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

§23.28. General Administrative Requirements.

Unless otherwise provided in this Chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (21) of this section, for the administration and use of HOME funds:

(1) Complete training, as applicable.

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements.

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period.

(4) For non-Single Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

(F) Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(G) Ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria.

(5) In instances where a potential conflict of interest exists, follow procedures to submit required documentation to the Department sufficient to submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions.

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable.

(7) Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan.

(8) Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within 60 days following receipt of the intake application.

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(10) Complete an updated income eligibility determination of a Household if the date of certification is more than six months prior to the Date of Assistance.

(11) For single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathrooms. The inspection must be signed and dated by the inspector and the Administrator. The photographs submitted with the initial inspection should evidence the deficiencies noted on the initial inspection and must clearly show the entire property, including other buildings located on the property,.

(12) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests

determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds.

(13) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion.

(14) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable.

(15) Submit any Program Income received by the Administrator or Developer to the Department within 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division.

(16) Submit required documentation for project completion reports no later than 60 days after the completion of the Activity, unless this term is extended though amendment.

(17) For Contract awards, submit certificate of Contract Completion within 14 days of the Department's request.

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department.

(19) Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

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

(21) If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award may result in termination of the RSP Agreement.

§23.29. Resale and Recapture Provisions.

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) To ensure continued affordability, the Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection and further defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented, leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the assisted property is sold, including through a short sale, deed in lieu of foreclosure, or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254, and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and assume the recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the low-income purchaser. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, only in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low-income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low-income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent AMFI and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in ex-

cess of the amount required by the loan, and any documented capital improvements in excess of $500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the penalty amount for noncompliance under the conditional grant agreement may be waived, if the new Household qualifies for assistance in accordance with this subchapter. If the new Household does not qualify for assistance in accordance with this Chapter, forgiveness of installment payments will cease and repayment of scheduled payments under the loan will commence and continue until maturity or payment of a penalty amount under the conditional grant agreement may be required in accordance with the terms of the conditional grant agreement.

(e) Forgiveness of installment payments under the loan may continue until maturity or the penalty amount under conditional grant agreement may be waived by the Department if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this Chapter.

(f) Grants subject to conditional grant agreements are not subject to the entire penalty amount in the event the property is no longer the Principal Residence of any Household member.

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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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.30. Homeowner Reconstruction Assistance (HRA) Threshold and Selection Criteria.

(a) Match requirement. Excluding Applications under the disaster relief and persons with disabilities set asides, Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) Zero percent of Direct Activity Costs, exclusive of Match, is required as Match:

(A) when the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) when the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent.

(b) The Department shall use population figures from the most recently available U.S. census bureau's American Community Survey (ACS) as of the date of submission of the Application to determine the applicable Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA.

(c) Documentation is required of a commitment of at least $40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(d) Selection criteria for this activity will be outlined in the NOFA.

§23.31. Homeowner Reconstruction Assistance (HRA) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) Reconstruction of housing on the same site meeting the following conditions:

(A) Replacement of an owner-occupied site-built house with either a new site-built house or a new Manufactured Housing Unit (MHU) on the same site;

(B) Replacement of an owner-occupied MHU with a new MHU on the same site;

(C) A unit that is not owner-occupied has been destroyed may be eligible for Reconstruction under subparagraph (A) or (B) of this paragraph if:

(i) the unit was the Principal Residence of the Household as of the date of destruction where evidence of the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction and Household certification in effect at the date of destruction; and

(ii) HOME funds are committed within 12 months of the date of destruction.

(2) New Construction of housing meeting the following conditions:

(A) Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

(B) Replacement of existing owner-occupied housing with an MHU or construction of site-built housing on another site contingent upon written approval of the Department; or

(C) Replacement of a housing unit determined to be uninhabitable within four years of submission of a Reservation for funds on the same site or another site when:

(i) the unit has been rendered uninhabitable as a direct result of a natural or man-made disaster, a condemnation order from the unit of local government, or a determination from the unit of local government that the unit presents an imminent threat to life, health, and safety of occupants; and

(ii) the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction as of the date of the disaster, condemnation order, or determination of uninhabitably though a Certification.

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) A federal affordability period is required;

(2) Any existing mortgage has been in place for less than three years from the date the Household applies for assistance; or

(3) The HOME loan is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(d) Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in this subsection; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of contract execution and may not be adjusted through this process. Current dollar amounts under this subsection will be reflected on the Department's website.

(1) Reconstruction and New Construction of site-built housing: the lesser of $120 per square foot of conditioned space or $135,000 or for Households of five or more Persons the lesser of $120 per square foot of conditioned space or $150,000 for a four-bedroom unit;

(2) Replacement with energy efficient MHU: $90,000; and

(3) Limits established in this subsection may be updated not more than annually at the discretion of the Board.

(e) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed $15,000 may be requested and if approved, used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Reconstruction or New Construction of site-built housing: no more than $12,000 per housing unit;

(2) Replacement with an MHU: no more than $3,500 per housing unit; and

(3) Third-party Activity soft costs related to costs incurred in connection with an Activity under this section, such as required housing counseling, appraisals, title reports or insurance, tax certificates, recording fees, surveys, and first year hazard and flood insurance are not subject to a maximum per Activity.

(g) Funds for administrative costs are limited to no more than five percent of the Direct Activity Costs, exclusive of Match funds.

(h) For New Construction Activities, the assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(i) For Reconstruction Activities, the assistance to an eligible Household will be in the form of a grant agreement with a five year affordability period.

(j) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(k) Site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(l) Unless an exception is requested by the Household and approved by the Division Director prior to submission of the Activity, each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(4) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(m) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this Title and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.32. Homeowner Reconstruction Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (20) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) When assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property;

(8) In the instance of relocation from one site to another site, the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Activity funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Activity under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;

(9) Identification of any Lead-Based Paint (LBP);

(10) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(11) Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(12) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(13) A title commitment or policy or a down date endorsement to an existing title policy evidencing the Household's ownership of the property:

(A) For New Construction Activities, a title commitment or down-date endorsement to an existing title policy the effective date title commitment must be no more than 60 days prior to of the date of Activity submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes; and

(B) For Reconstruction Activities, a title report or a title commitment dated not more than six months prior to the date of Activity submission;

(14) Documents evidencing ownership, such as a warranty deed, life estate, or 99-year leasehold;

(15) If the housing to be replaced is an MHU, a Statement of Ownership and Location (SOL) for the MHU;

(16) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(17) In the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

(18) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(19) For disaster relief set-aside Activities, evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a federal, state, or locally declared disaster that occurred less than four years prior to the submission of the Activity; and

(20) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements for Activities involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1)

- (12) of this subsection, may be required with a request for disbursement:

(1) For construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) For construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least 40 days after the Construction Completion Date;

(3) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(4) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of the each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(5) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided; that no Person that would benefit from the award of HOME funds; that it has satisfied any applicable cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service; and that the service does not violate any conflict of interest provisions;

(6) The executed grant agreement or original, executed, legally enforceable loan documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(7) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(8) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(9) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage 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.

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SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §§23.40 - 23.42

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.40. Contract for Deed (CFD) Threshold and Selection Criteria. Documentation that the Applicant can commit at least $40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

§23.41. Contract for Deed (CFD) General Requirements.

(a) Program funds may be utilized for Acquisition or refinance, and New Construction, of single family housing units occupied by the purchaser as shown on an executory contract for conveyance.

(b) The Household's income must not exceed 80 percent AMFI.

(c) The Department shall limit the availability of funds for CFD for a minimum of 60 days for Activities proposing to serve House-

holds whose income does not exceed 60 percent AMFI, and for properties located in a Colonia as defined in Tex. Gov't Code §2306.083.

(d) The Department will require a first lien position.

(e) Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in this subsection; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of contract execution and may not be adjusted through this process. Current dollar amounts under this subsection will be reflected on the Department's website.

(1) Refinance, acquisition, and closing costs: $35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of $120 per square foot of conditioned space or $135,000, or for Households of five or more Persons the lesser of $120 per square foot of conditioned space or $150,000 for a four-bedroom unit; and

(3) Replacement with an energy efficient MHU: $90,000.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed $15,000 may be used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(g) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition or refinance, and New Construction of site-built housing: no more than $13,500 per housing unit; and

(2) Acquisition or refinance, and replacement with an MHU: no more than $5,000 per housing unit.

(h) Funds for administrative costs are limited to no more than eight percent of the Direct Activity Costs, exclusive of Match funds.

(i) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.

(j) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

(k) Site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, zoning requirements, and the standards outlined in 24 CFR §92.251(a)(2) as applicable. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(l) Unless an exception is requested by the Household and approved by the Division Director prior to submission of the Activity, each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each bedroom must be no less than 100 square feet, have a length or width no less than eight fee, be self-contained with a door, have at least one window that provides exterior access, and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(4) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(m) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this Title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.42. Contract for Deed (CFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity and soft costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP);

(8) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(9) If applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) Appraisal which includes post construction improvements for Activities involving construction;

(11) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of Activity submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded executory contact and a current payoff statement; and

(15) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection may be required with a request for disbursement:

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than 14 calendar days prior to the anticipated loan closing date. Such a request must include a draft closing disclosure, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(9) include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner's insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage 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.

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SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.50 - 23.52

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.50. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

All Applicants and Applications must submit Documentation of a commitment of at least $15,000 for cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection; and

(3) evidence that the Service Area for a Contract or RSP Agreement includes the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, Service Areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside. If the Applicant is a unit of local government, the Service Area may be limited to the boundaries of the jurisdiction of the Applicant.

§23.51. Tenant-Based Rental Assistance (TBRA) General Requirements.

(a) Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.

(b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.

(c) A Household certifying to zero income must also complete a questionnaire that includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 percent of the Household's gross monthly income.

(e) Activity funds are limited to:

(1) Rental subsidy: Each rental subsidy term is limited to no more than 24 months. Total lifetime assistance to a Household may not exceed 36 months cumulatively, except that a maximum of 24 additional months of assistance, for a total of 60 months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; or

(C) the Administrator submits documentation evidencing that:

(i) no Public Housing Authority within a 50 mile radius of the Household's address during their participation in TBRA has opened their waitlist during the term of the Household's participation in TBRA, or has excluded the Household's application for placement on the waiting list for any reason other than eligibility or failure to respond to required notices, such as a randomized drawing of applications that may be placed on the waitlist; and

(ii) no waiting list was opened during the term of the Household's participation in TBRA for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; or

(iii) the Household is not eligible for placement on a waiting list for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; and

(D) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(E) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) Security deposit: no more than the amount equal to two month's rent for the unit.

(3) Utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the Date of Assistance. The payment standard utilized by the Administrator must be:

(1) For metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) For nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) For a HOME assisted unit, the current applicable HOME rent; or

(4) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in Section 1.204 of this Title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Funds for Administrative costs are limited to ten percent of Direct Activity Costs, excluding Match funds. All costs must be reasonable and customary for the Administrator's Service Area.

(h) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one month if a tenant moves out of an assisted unit prior to the lease end date.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with Section 10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in Section 10.802 of this Title) will govern).

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity without prior written consent of the Department.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

§23.52. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (10) of this subsection, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Direct Activity Costs, Activity soft costs, administrative costs requested, Match to be provided, evidence that Direct Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) If applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) Project address within 90 days of preliminary set up approval, if applicable;

(9) For Households assisted under the Disaster set-aside, verification that the household was displaced or is at-risk of displacement as a direct result of a Federal, State, or Locally declared disaster approved by the Department within four years of the date of Activity submission; and

(10) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (7) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (7) of this subsection may be required with a request for disbursement:

(1) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Activity Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and account-

ing for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of a maximum of 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(5) Monthly subsidy may not be requested earlier than the tenth day of the month prior to the upcoming subsidized month;

(6) For final disbursement requests, submission of documentation required for Activity completion reports; and

(7) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.60 - 23.62

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.60. Single Family Development (SFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with this section.

(1) An Application for Community Housing Development Organization (CHDO) certification. Applicants must meet the requirement for CHDO certification as defined in §13.2 of this Title (relating to the Multifamily Direct Loan Rule).

(2) The Applicant must provide:

(A) evidence of a line of credit or equivalent tool of at least $80,000 from a financial institution that will be available for use during the proposed development activities; or

(B) a letter from a third party Certified Public Accountant (CPA) verifying the capacity of the owner or developer to provide at least $80,000 as a short term loan for development; and

(C) a letter from the developer's or owner's bank(s) confirming funds amounting to at least $80,000 is available.

(3) A proposed development plan that is consistent with the requirements of this Chapter, all other federal and state rules, and includes:

(A) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(B) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(C) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(D) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least 120 days from the date of application submission; and

(E) an "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction.

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

§23.61. Single Family Development (SFD) General Requirements.

(a) Program funds under this subchapter may be used for the Development of new single family housing for homeownership that complies with affordability requirements as defined at 24 CFR §92.254.

(b) Program funds under this subchapter are only eligible to be administered by a CHDO certified as such by the Department. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed $50,000 within any one year period, and may not draw more than $25,000 in CHDO operating funds in any twelve month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.

(c) The Household's income must not exceed 80 percent AMFI.

(d) Each unit must meet the design and quality requirements described in paragraphs (1) - (5) of this subsection:

(1) Current applicable International Residential Code, local codes, ordinances, and zoning ordinances in accordance with 24 CFR §92.251(a);

(2) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(3) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(4) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(5) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(e) Housing proposed to be constructed under this subchapter must meet the requirements in Chapters 20 and 21 of this Title and plans submitted with the Application must be certified by a licensed architect or engineer.

(f) The total hard construction costs are limited to $120 per square foot of conditioned space and $135,000 for units with three or fewer bedrooms and the lesser of $120 per square foot of conditioned space or $150,000 units with four or more bedrooms. Not more than once per year, the Board in its sole discretion, may increase or decrease by up to 5 percent of the limitation for hard construction costs. Total Activity costs may not exceed HUD Subsidy Limits. Current dollar amounts under this subsection will be reflected on the Department's website.

(g) In addition to the Direct Activity Costs allowable under subsection (f) of this section, a sum not to exceed $15,000 may be used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homebuyer requests for accessibility features.

(h) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. The developer fee will be reduced by one percent per month or partial month that the construction period exceeds the original term of the construction period financing.

(i) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction of an entire development Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:

(1) Any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) If more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(j) Construction period financing for each unit shall be structured as a zero percent interest loan with a 12-month term. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, closing costs associated with the permanent mortgage financing, and ineligible Activity costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(k) In the instance that the total development cost equals more than 100 percent of the appraised value, the portion of the development cost that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price. Reasonable and customary seller closing costs may be provided with HOME funds as a grant to the Developer.

(l) Direct assistance to the buyer will be structured as a first and/or second lien loan(s):

(1) A first-lien, fully amortizing, repayable loan with a 30-year term may be provided by the Department and will initially be evaluated at zero percent interest. The loan amount will not exceed the total development cost combined with reasonable and customary buyer's closing costs. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent, and such result may deem the applicant as overqualified for assistance.

(A) The total Mortgage Loan may include costs incurred for the total development cost and Mortgage Loan Closing Costs, exclusive of Match funds.

(B) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(C) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(2) Downpayment and closing costs assistance is limited to the lesser of downpayment required by a third-party lender and reasonable and customary buyer's closing costs, or the amount required to ensure affordability of the HOME financing. Downpayment and closing cost assistance may not exceed ten percent of the total development cost and shall be structured as a five or ten-year deferred, forgivable loan with a subordinate lien, in accordance with the required federal affordability period.

(3) A first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this Title.

(m) Earnest money is limited to no more than $1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash.

(n) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within 90 days of the end of the construction period, all additional funding, closings, and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(o) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(p) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.62. Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment of Funds as described in paragraphs (1) - (12) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP) if site remediation is needed;

(8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) Evidence that the housing unit will be located outside the 100-year floodplain;

(10) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(11) Appraisal, which includes post construction improvements; and

(12) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Construction Loan closing. The Administrator must submit the documents described in paragraphs (1) - (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment of Funds:

(1) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) Within 90 days after the loan closing date, the Administrator must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within 90 days after the loan closing date will result in the Department withholding payment for disbursement requests.

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) For construction costs, an interim construction binder advance endorsement not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage a down date endorsement to the mortgagee policy issued to the homebuyer dated at least 40 days after the Construction Completion Date;

(2) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds

to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(7) Table funding requests must be submitted to the Department with complete documentation no later than 14 days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(8) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, submission of documentation required for Activity completion reports;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage 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.

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SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §§23.70 - 23.72

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.70. Homebuyer Assistance with New Construction (HANC) Threshold and Selection Criteria.

(a) Threshold Match requirement. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date that an Application is first submitted under the NOFA to determine the applicable Threshold Match requirement. The Department may incentivize or provide preference to Applicants committing to provide additional Threshold Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA. Excluding Applications under the disaster relief and persons with disabilities set asides, Threshold Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) No Threshold Match is required when:

(A) the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) the Service Area does not include the entire unincorporated area of a county, and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population up to a maximum of 15 percent.

(b) Cash Reserve Threshold Requirement. When HOME funds will be utilized for construction activities, documentation, as described in paragraphs (1) and (2) of this subsection, must be submitted at the time of Application that demonstrates that the Applicant has at least $40,000 in cash reserves. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(c) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

§23.71. Homebuyer Assistance with New Construction (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in paragraph (1) of this subsection and an Activity described in paragraph (2) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include New Construction of a unit of single family housing not occupied by the Household prior to assistance; New Construction described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU).

(b) The unit of housing in any of the Activities described in subsection (a) of this section must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.

(c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity

loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(d) The purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing. Compliance with the post-improvement value limitation must be evidenced with a final appraisal of the completed project prior to release of retainage.

(e) Activity Costs. Total Activity Costs, exclusive of Match funds, are limited to an amount not to exceed the federal subsidy limitations defined in 24 CFR §92.250. Direct Activity Costs, exclusive of Match and leverage, for construction are limited to:

(1) Construction of new site-built housing: The Direct Activity Costs are not restricted beyond the Total Activity Costs as identified in this subsection; and

(2) Placement of an energy efficient MHU: $90,000.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed $15,000 and not causing the total subsidy to exceed the limitations set forth by 24 CFR §92.250 may be requested and, if approved, used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homebuyer requests for accessibility features.

(g) Activity soft costs eligible for reimbursement are limited to:

(1) New Construction of site-built housing: no more than $13,500 per housing unit; or

(2) Replacement with an MHU: no more than $5,000 per housing unit.

(h) Funds for administrative costs are limited to no more than eight percent of the Direct Activity Costs, exclusive of Match funds.

(i) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of Section 20.13 of this Title (relating to Loan, Lien and Mortgage Requirements for Activities).

(j) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.

(1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.

(2) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(3) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(k) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(l) To ensure affordability, the Department will impose recapture provisions established in this Chapter.

(m) For New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this Title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) To the extent that a set of architectural plans are generated and used by an Applicant for more than one home site, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer for the reuse of the plans on that subsequent specific site.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.72. Homebuyer Assistance with New Construction (HANC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;

(8) Evidence that the housing unit will be located outside of the 100-year floodplain;

(9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;

(10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;

(11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;

(13) For Activities involving acquisition of real property:

(A) A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(B) Executed sales contract; and

(C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter;

(14) For Activities that do not involve acquisition of real property:

(A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than 60 days prior to of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B) A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property;

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordinate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom, and each bathroom with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification of the following is required:

(A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided;

(B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and

(D) That the service does not violate any conflict of interest provisions;

(5) Original, fully executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Disbursement requests must include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, the following is required:

(A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot;

(B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage 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.

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Bobby Wilkinson
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Texas Department of Housing and Community Affairs
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CHAPTER 24. TEXAS BOOTSTRAP LOAN PROGRAM RULE

10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Texas Bootstrap Loan Program.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Texas Bootstrap Loan Program.

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

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

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

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

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

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed repealed chapter. Written comments

may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

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

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

§24.1. Purpose.

§24.2. Definitions.

§24.3. Allocation of Funds.

§24.4. Administrator Requirements.

§24.5. Program Activities.

§24.6. Prohibited Fees.

§24.7. Distribution of Funds.

§24.8. Criteria for Funding and Reservations.

§24.9. Program Administration.

§24.10. Owner-Builder Qualifications.

§24.11. Property Guidelines and Related Issues.

§24.12. Administrator Certification.

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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10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12. The purpose of the proposed new rule is to implement a more germane rule and better align administration to state requirements.

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

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

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

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

1. The proposed new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Bootstrap Loan Program

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

3. The proposed new rule does not require additional future legislative appropriations.

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

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

6. The proposed new rule will not expand or repeal an existing regulation.

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

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

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

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 20 rural communities currently participating in the Texas Bootstrap Loan Program that are subject to the proposed new rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Texas Bootstrap Loan Program is

at the discretion of the eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

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

Except as described herein the proposed new rules affect no other code, article, or statute.

§24.1. Purpose.

(a) This chapter clarifies the Texas Bootstrap Loan Program, administered by the Texas Department of Housing and Community Affairs (the Department), also known as the Owner-Builder Loan Program. The Texas Bootstrap Loan Program provides assistance to income-eligible individuals, families and households to purchase or refinance real property, on which to build new residential housing or improve existing residential housing. The Program is administered in accordance with Tex. Gov't Code, Chapter 2306, Subchapter FF, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(b) The Texas Bootstrap Loan Program is a self-help housing construction Program designed to provide Low Income families an opportunity to help themselves attain homeownership or repair their existing homes under applicable building codes and housing standards.

§24.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions may be found in Tex. Gov't Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(1) Capital Recovery Fee--A charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, contributions in aid of construction, and any other fee that functions as described by this definition.

(2) Loan Commitment--A written agreement between the Department and Administrator that memorializes the term of the commitment of funds for a specific Mortgage Loan to a Qualified Household.

(3) Loan Origination and Reservation System Access Agreement (Reservation Agreement)--A written agreement, including all amendments thereto between the Department and the Administrator that authorizes the Administrator to originate certain loans under the Texas Bootstrap Loan Program.

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

(5) New Construction--A Single Family Housing Unit that is newly built on a previously vacant lot that will be occupied by an Income Eligible Household.

(6) Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or is purchasing a piece of real property under a Contract for Deed entered into before January 1, 1999; and who undertakes to make improvements to that property.

(7) Rehabilitation--The improvement, including reconstruction, or modification of an existing Single Family Housing Unit through an alteration, addition, or enhancement on the same lot.

(8) Very Low Income--Household income does not exceed the greater of 60% of the Area Median Family Income or 60% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

§24.3. Allocation of Funds.

(a) The Department administers all Texas Bootstrap Loan Program funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306, Subchapter FF.

(b) The Department may make loans for the Texas Bootstrap Loan Program from:

(1) Available funds in the Texas Housing Trust Fund established under Tex. Gov't Code, §2306.201; or

(2) Federal block grants that may be used for the purposes of this chapter.

(c) Each state fiscal year the Department shall transfer at least $3 million (or another amount if so required by Tex. Gov't Code or the General Appropriations Act) to the Texas Bootstrap Loan Program from money received under federal block grants or from available funds in the Texas Housing Trust Fund.

(d) The Department may use up to 10% of Program funds available per state fiscal year to enhance the ability of tax-exempt

organizations described by Tex. Gov't Code, §2306.755(a), to increase the number of such organizations that are able to implement the Program. The Department shall use that available revenue to provide financial assistance, technical training and management support.

§24.4. Administrator Requirements.

(a) Eligible Administrators. The following organizations or entities are eligible to become Administrators of the Texas Bootstrap Loan Program:

(1) Colonia Self Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; or

(2) Nonprofit Organizations certified by the Department pursuant to Tex. Gov't Code, §2306.755.

(b) Eligibility requirements. The Administrator must enter into a Reservation Agreement with the Department in order to be eligible to submit an Activity through the Reservation System. The Administrator must have the capacity to administer and manage resources as evidenced by previous experience of managing state or federal programs.

§24.5. Program Activities.

(a) Texas Bootstrap Loan Program funds may be used to finance affordable housing and promote homeownership through acquisition, New Construction, or Rehabilitation of single family residential housing subject to Program Manual and Survey requirements. Administrators may reserve funds by submitting a loan application on behalf of an Owner-Builder Applicant for the Texas Bootstrap Loan Program.

(b) Manufactured Housing Units are not eligible housing types for the Texas Bootstrap Loan Program.

(c) All Texas Bootstrap Loan Program Loans will be evidenced by a promissory note and will be secured by a lien on the subject property. The following Activities are permitted by the Department under the Program:

(1) Purchase Money Loans. All Program funds are used to finance the purchase of a single-family dwelling unit and/or a piece of real property. The Department makes a loan to the Owner-Builder and the Owner-Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds;

(2) Residential Construction Loans. This transaction is treated as a purchase money loan and is a one-time closing with the Owner-Builder. Construction period may be up to 12 months;

(3) Interim Construction (Closing with Administrator) Loans. Interim construction is a commercial transaction between the Administrator and the Department that is with respect to a specific Owner-Builder. The construction period may be up to 12 months. Once the construction of the home is completed, the closing with the Owner-Builder will take place as a purchase money loan; and

(4) Purchase of Mortgage Loans. The Department may purchase and take assignments from Mortgage lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this subsection.

§24.6. Prohibited Fees.

The fees described in paragraphs (1) - (8) of this section are prohibited Program fees and may not be charged directly to the Owner-Builder; however, these fees may be charged as an allowable fee by a third party lender or servicer for a Texas Bootstrap Loan Program loan:

(1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas Bootstrap Loan Program funds;

(2) Loan origination fees;

(3) Application fees;

(4) Discount fees;

(5) Underwriter fees;

(6) Loan processing fees;

(7) Loan servicing fees; and

(8) Other fees not approved by the Department in writing prior to expenditure.

§24.7. Distribution of Funds.

(a) Set-Asides. In accordance with Tex. Gov't Code §2306.753(d), at least two-thirds of the dollar amount of Program loans made in each fiscal year must be made to Owner-Builders whose real property is located in a census tract that has a median household income that is not greater than 75% of the median state household income for the most recent year for which statistics are available.

(b) Balance of State. The remaining one-third of the dollar amount of Program loans made may be made to Owner-Builders anywhere in the state.

(c) Loan Priority. The Department may allow an Administrator access to the Reservation System 24 hours prior to all other Administrators for reservations for Owner-Builder Applicants that meet the following criteria:

(1) Annual household income is less than $17,500; or

(2) Real property is located in a county or municipality that agrees in writing to waive the Capital Recovery Fees, building permit fee or other fees related to the house(s) to be built with the loan proceeds. Owner-Builder Applicant will not receive priority if there are none of the fees described in §24.6 of this chapter (relating to Prohibited Fees) imposed by the county or municipality or water supply company.

§24.8. Criteria for Funding and Reservations.

(a) The Department will distribute Program funds in accordance with the Texas Housing Trust Fund (Texas HTF) Plan in effect at the time. The Department will publish an announcement for a NOFA in the *Texas Register* and post the NOFA on the Department's website. The rules referenced in §24.1 of this Chapter (relating to Purpose) and the NOFA will establish and define the terms, conditions, and maximum Reservation amounts allowed per Administrator. The Department may also set a deadline for receiving Reservations or Applications. The NOFA will indicate the approximate amount of available funds. The Department may increase the amount of funds made available through the NOFA from time to time without republishing the NOFA in the *Texas Register.* Such increases will be reflected on the Department's website.

(b) Any Reservation containing false information will be disqualified. The Department will review and process all Reservations in the order received.

(c) Reservations received by the Department in response to a NOFA will be handled as described in paragraphs (1) - (5) of this subsection.

(1) The Department will accept Reservations until all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation system. Each Reservation will be reviewed in accordance with the Program rules.

(3) Reservations must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in this chapter. Reservations that do not comply with such requirements may be disqualified. The Administrator will be notified in writing of any cancelled or disqualified Reservations.

(4) If a Reservation contains deficiencies which, in the determination of the Department, require clarification or correction of information submitted at the time of the Reservation, the Department may request clarification or correction in the form of a deficiency notice to the Administrator. If the Administrator is unable to cure any deficiencies within 14 calendar days, the Department may decline to fund the Reservation. The Department may provide one 14 calendar day extension to the curative deadline outlined in the deficiency notice.

(5) Prior to issuing a Loan Commitment, the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued a Loan Commitment, but the Administrator or Owner-Builder Applicant has not complied with all the Program rules and guidelines, the Department may suspend funding until the Administrator or Owner-Builder Applicant has satisfied all requirements of the Program.

§24.9. Program Administration.

(a) Pursuant to Tex. Gov't Code §2306.754(b), the Department shall not exceed $45,000 in household assistance for any Texas Bootstrap Loan Program loan. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for $45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds, excluding Texas HTF.

(b) The Department shall make loans for Owner-Builder Applicants to enable them to:

(1) Build new residential housing, including the purchase or refinance of real property, if needed, on which to undertake such Activity; or

(2) Improve existing residential housing, including the purchase or refinance of real property, if needed, on which to undertake such Activity.

(c) Upon approval by the Department, the Administrator shall enter into, execute, and deliver to the Department the Reservation Agreement. The Department may terminate the Reservation Agreement in whole or in part if the Administrator has not performed as outlined in the Program Rule, NOFA, Reservation Agreement, or Program Manual.

(d) If the Owner-Builder Applicant qualifies for the Program, the Department will issue a Loan Commitment which reserves up to $45,000 in funds for 12 months from the date of the Loan Commitment. The Owner-Builder Applicant will not be required to re-qualify if the Owner-Builder Applicant closes by the expiration date on the Loan Commitment. If an Owner-Builder Applicant does not close by the expiration date, the Owner-Builder Applicant must re-qualify for the Program; however, the Department may grant an extension of up to 180 days from the expiration date on the original Loan Commitment. If the Owner-Builder Applicant fails to close on the loan after the extension is granted the Reservation or loan will be cancelled.

(e) Roles and responsibilities for administering the Program Contract. Administrators are required to:

(1) Qualify potential Owner-Builders for loans;

(2) Provide Owner-Builder homeownership education classes and ensure provision of HUD-certified housing counseling;

(3) Supervise and assist Owner-Builders to build or Rehabilitate housing;

(4) Facilitate loans made or purchased by the Department under the Program; and

(5) Implement and administer the Program on behalf of the Department.

(f) Loan Servicing Agreement. Administrators may service Program loans originated on behalf of the Department. Administrators servicing Program loans on behalf of the Department must obtain prior approval and enter into a loan servicing agreement with the Department. Administrator certification for a loan servicing agreement expires annually, after which an Administrator in good standing with the Department may apply for recertification of the loan servicing agreement utilizing the recertification application provided by the Department's Loan Servicing section. Loan servicing agreements may be reevaluated from time to time and may be terminated at the discretion of the Department.

(g) First Year Consultation Agreement. If the Department notifies the Administrator that an Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents, within the first 12 months of funding, the Administrator must meet with the Owner-Builder and provide counseling to assist in bringing the payments current. After such consultation and in the event that the Department and Administrator are not able to bring the Program loan current, the Department in accordance with its administrative rules, may apply appropriate graduated sanctions leading up to, but not limited to, deobligation of funds and future debarment from participation in the Program.

(h) Administrative Fee. The Administrator will be granted a 10% administrative fee upon completion of the house and funding of each Mortgage Loan.

(i) Construction Plans. If the activity is New Construction or reconstruction, Administrator must submit a legible copy of the proposed construction plans for approval by the Department prior to the Administrator accepting applications for Owner-Builder Applicants.

(j) Work Write-up. If Administrator's activity is Rehabilitation, Administrator must adhere to TMCS and submit work write-ups and cost estimates for Department approval prior to construction.

(k) Loan Program Requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as described in paragraphs (1) - (6) of this subsection:

(1) Minimum loan amount is $1,000;

(2) Loan term may not exceed 30 years;

(3) Loan term may not be less than five years;

(4) Loan must be at zero percent (0%) interest for the entire loan term;

(5) When refinancing a Contract for Deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property; and

(6) Owner-Builder must have resided in Texas for the preceding six months prior to the date of loan application.

(l) Loan Assumption. A Program loan is assumable if the Department determines that the Owner-Builder Applicant complies with all Program requirements in effect at the time of the assumption.

§24.10. Owner-Builder Qualifications.

The Owner-Builder must:

(1) Own or be purchasing a piece of real property with the conveyance of said property evidenced by a warranty deed or Contract for Deed;

(2) Be qualified as Low Income. Income eligibility of a Household is determined using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income. At least two months of source documentation of earned income must be provided.

(3) Execute a self-help agreement committing to specify and satisfy one of the criteria provided for in subparagraphs (A) - (D) of this paragraph:

(A) Provide at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Administrator;

(B) Provide an amount of labor equivalent to 65% in connection with building or rehabilitating housing for others through a state-certified Administrator;

(C) Provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Administrator; or

(D) If due to a documented disability or other limiting circumstances the Owner-Builder cannot provide the amount of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Administrator;

(4) Successfully complete an Owner-Builder homeownership education class and HUD-certified housing counseling prior to loan funding;

(5) Not have any outstanding judgments or liens on the property; and

(6) Occupy the residence as a Principal Residence within 30 days of the end of the construction period or the closing of the loan, whichever is later. If the Owner-Builder fails to do so, the Department may declare the loan in default and accelerate the note. Any additional habitable structures must be removed from the property prior to closing; however, a portion of the structure may be utilized as storage upon the Department's written approval prior to closing.

§24.11. Property Guidelines and Related Issues.

(a) A final appraisal is required by the Department on each property prior to loan closing.

(b) Title Commitment.

(1) A copy of the preliminary title report including complete legal description and copies of all schedules, covenants, conditions and restrictions, easements, and any supplements thereto is required at the time of submission, and must not be more than 90 days old.

(2) Title commitments must list the Department's Loan.

(3) The final title commitment or title report submitted to the Department to draft Loan documents should not be more than 30 days old at the time of the submission in order to remain valid and effective at the date of the loan closing. Title commitments older than 90 days are no longer valid and must be updated prior to the date of loan closing.

(c) For acquisition of existing Single Family Housing Unit that will not be rehabilitated, a property inspection will be required to be completed by an inspector licensed by the Texas Real Estate Commission. A copy of the inspection report must be submitted and any deficiencies listed on the report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. may not be required to be corrected if utilizing a self-help construction Program. A copy of the inspection report must be provided to the Owner-Builder Applicant and the Department. The Administrator or the Owner-Builder Applicant will be responsible for the selection and the fee of the licensed inspector.

§24.12. Administrator Certification.

(a) An Administrator must be certified prior to execution of a Reservation Agreement. The term of the Reservation Agreement shall not exceed 36 months, after which an Administrator must reapply for certification and a new Reservation Agreement.

(b) The Department will produce an Application to satisfy the Department's requirements to be certified to administer the Texas Bootstrap Loan Program. The Application will be available on the Department's website. Applications for a Reservation Agreement will include, at a minimum, criteria listed in subsections (c) - (m) of this section.

(c) An Application for certification must be submitted in the format required by the Department.

(d) If the Applicant is a Nonprofit Organization, Applicant must demonstrate:

(1) The Applicant is registered and in good standing with Office of the Secretary of State and the State Comptroller's Office as a nonprofit corporation under the Texas Business Code or a nonprofit organization under any other state not-for-profit/nonprofit statute;

(2) The net earnings of the Applicant may not inure to the benefit of any member, founder, contributor, or individual, as evidenced by charter, Bylaws, or Certificate of Formation or Articles of Incorporation, as applicable;

(3) The Applicant has been granted 501(c)(3) tax-exempt status as a charitable, nonprofit corporation or as a subordinate organization of a central nonprofit corporation under §501(c)(3) of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective while certified as an Administrator.

(4) The Applicant have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's charter, Certificate of Formation, Articles of Incorporation, Resolutions, or Bylaws.

(e) The Applicant must conform to the United States Generally Accepted Accounting Principles (GAAP) as evidenced by a notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department or certification from a Certified Public Accountant.

(f) If the Applicant proposes to provide interim or residential construction funds, it must provide an audited financial statement for the most recent fiscal year or a signed and dated financial statement for the period since last published audit. If the Applicant does not have audited financial statements or a signed and dated financial statement for the period since last published audit must provide a resolution from the Board of Directors that is signed and dated within 6 months from the date of Application and certifies that the accounting procedures used by the organization conform to the GAAP. Certified Administrators that do not have audited financial statements or a signed and dated financial statement for the period since last published audit are restricted to only originating permanent loans and will be ineligible for any interim or residential construction loans, until the Department has reviewed the most current audited financial statements.

(g) The Applicant must demonstrate capacity for carrying out Mortgage Loan origination and self-help housing construction Activities, as evidenced by resumes or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization.

(h) Religious or Faith-based Organizations (RFOs) may sponsor an Applicant if the Applicant meets all the requirements of this section. While the governing board of an Applicant sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the RFO may retain control over appointments to the board. Additionally, RFOs must comply with the following:

(1) Housing developed must be made available exclusively for the residential use of Program beneficiaries, and must be made available to all persons regardless of religious affiliations or beliefs;

(2) Texas Bootstrap Loan Program funds may never be used to support any explicitly religious activities such as worship, religious instruction, or proselytizing; and

(3) Compliance with paragraphs (1) and (2) of this subsection must be evidenced by the Bylaws, charter or Certificate of Formation.

(i) Program Design and Guidelines. The Applicant must have policies for how the Owner-Builders participating in its Program will meet the self-help requirements and guidelines related to qualifying potential Owner-Builders.

(j) The Applicant must provide to the Department the number of houses they are proposing to build, type of proposed financing structure and construction timelines, to evidence its ability to carry out the Program.

(k) The Applicant must provide curriculum related to homebuyer education, as well as evidence of its ability to provide HUD-certified housing counseling, which may be provided by the Administrator or another HUD-certified provider.

(l) The Applicant must be in compliance with 10 TAC §1.403 (relating to Single Audit Requirements), and 10 TAC §20.8 (relating to Fair Housing, Affirmative Marketing and Reasonable Accommodations) at the time of Application.

(m) The Applicant must be in compliance with any existing Contracts awarded by the Department and is subject to the Department's Previous Participation Review process provided for in 10 TAC §1.302 (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and §1.303 (relating to Executive Award and Review Advisory Committee (EARAC) of this title.

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 December 8, 2023.

TRD-202304635
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-3959

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CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, §§26.1 - 26.7 and 26.20 - 26.28. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Texas Housing Trust Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed repealed chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §§26.1 - 26.7

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

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

§26.1. Purpose.

§26.2. Definitions.

§26.3. Allocation of Funds.

§26.4. Use of Funds.

§26.5. Prohibited Activities.

§26.6. Administrator Eligibility and Requirements.

§26.7. Conflict of Interest.

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 December 8, 2023.

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Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM

10 TAC §§26.20 - 26.28

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

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

§26.20. Amy Young Barrier Removal Program Purpose.

§26.21. Amy Young Barrier Removal Program Definitions.

§26.22. Amy Young Barrier Removal Program Geographic Dispersion.

§26.23. Amy Young Barrier Removal Program Administrative Requirements.

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

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

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

§26.27. Amy Young Barrier Removal Program Construction Requirements.

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

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

Filed with the Office of the Secretary of State on December 8, 2023.

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Bobby Wilkinson
Executive Director
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CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, §§26.1 - 26.7 and 26.20 - 26.28. The purpose of the proposed new chapter is to implement a more germane rule and better align administration to state requirements.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Housing Trust Fund.

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

3. The proposed new rule changes do not require additional future legislative appropriations.

4. The proposed new rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.

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

6. The proposed new rule will not expand or repeal an existing regulation.

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

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

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

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 20 rural communities currently participating in the Texas Housing Trust Fund that are subject to the proposed new rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the proposed new rule will be in effect the proposed rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed new chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §§26.1 - 26.7

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

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

§26.1. Purpose.

This chapter clarifies the administration of the Texas Housing Trust Fund (Texas HTF). The Texas HTF provides loans, grants or other comparable forms of assistance to income-eligible individuals, families, and households. The Texas HTF is administered in accordance with Tex. Gov't Code, Chapter 2306, Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), and Chapter 24 of this title (relating to Texas Bootstrap Loan Program Rule).

§26.2. Definitions.

Definitions may be found in Tex. Gov't Code, Chapter 2306; Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 24 of this title (relating to Texas Bootstrap Loan Program Rule), unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

§26.3. Allocation of Funds.

(a) The Department administers all Texas HTF funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306. The Department may solicit gifts and grants to endow the fund.

(b) Pursuant to Tex. Gov't Code §2306.202(b), use of the Texas HTF is limited to providing:

(1) Assistance for individuals and families of low and very low income;

(2) Technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;

(3) Security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and

(4) Subject to the limitations in Tex. Gov't Code §2306.251(c), the Department may also use the fund to acquire property to endow the fund.

(c) Set-Asides. In accordance with Tex. Gov't Code §2306.202(a) and program guidelines:

(1) In each biennium, the first $2.6 million available through the Texas HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit Organizations;

(2) Any additional funds may also be made available to for-profit organizations provided that at least 45% of available funds, as determined on September 1 of each state fiscal year, in excess of the first $2.6 million shall be made available to Nonprofit Organizations for the purpose of acquiring, rehabilitating, and developing decent, safe, and sanitary housing; and

(3) The remaining portion shall be distributed to Nonprofit Organizations, for-profit organizations, and other eligible entities, pursuant to Tex. Gov't Code §2306.202.

§26.4. Use of Funds.

(a) Use of additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations, or interest earnings, the Department will redistribute the funds in accordance with the Texas HTF plan in effect at the time the additional funds become available.

(b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the Texas HTF plan in effect at the time.

(c) Use of excess loan repayments and interest earnings. The Texas HTF may be used to respond to unanticipated challenges that may arise in the course of implementing approved single family Program Contracts, activities, or assets that are not readily addressed with federal funds. In the event that Texas HTF loan repayments and interest earnings exceed the requirements under the Texas HTF interest earnings and loan repayments Rider in the General Appropriations Act, up to $250,000 per biennium of these excess Texas HTF loan repayments and interest earnings may be used for this purpose. If a balance exists from the previous biennium, the Department shall transfer only the necessary amount to replenish this fund to a maximum balance of $250,000 at the start of the biennium. These funds may be used as described in this subsection.

(1) Funds are to be used for internal disposition.

(2) Neither Households nor Program Administrators are eligible to apply for these funds.

(3) Any funds used under this subsection requires authorization of the Executive Director.

(4) Uses for the funds must meet at least one of the following criteria:

(A) For Households previously assisted by the Department with Department funds, for which the Department has confirmed that further work is still required, and for which the original source of funds is no longer able to be used; or

(B) Properties previously owned by Households assisted by the Department, having been foreclosed upon by the Department, and requiring additional carrying costs or improvements to sell the property or transfer the property for an affordable purpose.

§26.5. Prohibited Activities.

(a) Persons receiving or benefiting from Texas HTF funds, as determined by the Department, may not be currently delinquent or in default with child support, government loans, or any other debt owed to the State of Texas.

(b) The activities described in paragraphs (1) - (8) of this subsection are prohibited in relation to the origination of a Texas HTF loan, but may be charged as an allowable cost by a third party lender for the origination of all other loans originated in connection with a Texas HTF loan:

(1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas HTF funds;

(2) Loan origination fees;

(3) Application fees;

(4) Discount fees;

(5) Underwriter fees;

(6) Loan processing fees;

(7) Loan servicing fees; and

(8) Other fees not approved by the Department in writing prior to expenditure.

§26.6. Administrator Eligibility and Requirements.

Administrator must enter into a written Agreement with the Department in order to be eligible to access the Texas Housing Trust Fund.

§26.7. Conflict of Interest.

In addition to the conflict of interest requirements in Uniform Grants Management Standards (UGMS) or Texas Grants Management Standards (TXGMS) (as applicable to the Contract), no person who is an employee, agent, consultant, officer, trustee, director, member of a governing board or other oversight body, elected official or appointed official of the Administrator who exercises or has exercised any functions or responsibilities with respect to Texas HTF activities under the State Act, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a

personal or financial interest or benefit from a Texas HTF assisted activity, or have an interest in any Texas HTF Contract, subcontract, or agreement, or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

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 B. AMY YOUNG BARRIER REMOVAL PROGRAM

10 TAC §§26.20 - 26.28

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§26.20. Amy Young Barrier Removal Program Purpose.

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

§26.21. Amy Young Barrier Removal Program Definitions.

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

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

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

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

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

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

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

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

§26.22. Amy Young Barrier Removal Program Geographic Dispersion.

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

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

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

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

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

§26.23. Amy Young Barrier Removal Program Administrative Requirements.

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department through the submission of a Reservation System Access Application. Eligible participants include, but are not limited to: Colonia Self-Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities; and Public Housing Authorities. An eligible participant may be further limited by NOFA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) If a Household is determined to be eligible for assistance from the Department, the Department will issue a Household Assistance Contract reflecting the maximum award amount permitted under the NOFA in Project Costs and an Administrative Fee equal to 10% of the combined Hard and Soft costs in the Contract System on behalf of the Household, funding permitting. The term of the Household Assistance Contract shall not exceed 270 days, unless the term is amended in accordance with the requirements of 10 TAC §20.13 (relating to Amendments to Written Agreements and Contracts).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§26.27. Amy Young Barrier Removal Program Construction Requirements.

(a) Inspections.

(1) Initial inspection arranged by the Administrator is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.

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

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

(c) Construction standards.

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

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

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

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

(d) Life-threatening hazards and unsafe conditions.

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

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

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

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

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

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

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

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

(a) The Administrator must complete all construction activities prior to the expiration of the Household Assistance Contract and the Administrator must submit the Project and Administrative Draw Request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department. The Department may grant a one-time, 30-calendar day extension to the Project completion deadline. The Department may grant additional extensions due to extenuating circumstances that are beyond the Administrator's control.

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

(c) The Administrator must provide the Household all warranty information for work performed by the builder and any materials

purchased for which a manufacturer or installer's warranty is included in the price.

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

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

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter A, §111.1; Subchapter C, §111.23; Subchapter F, §111.50; Subchapter P, §§111.150, 111.151, and 111.155; Subchapter Q, §111.160; and Subchapter T, §111.190 and §111.192; and the repeal of existing rules at Subchapter O, §111.140, regarding the Speech-Language Pathologists and Audiologists program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 111, implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department. Specific provisions within this rule chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 111, 112, 116, and 402, as applicable.

The proposed rules are necessary to implement recommended changes from the Speech Language Pathologists and Audiologists Advisory Board with input from two of its workgroups; implement select changes from Department staff as a result of the four-year rule review; and make technical corrections from two previous rulemakings.

Advisory Board Workgroup Changes

The proposed rules implement recommended changes from the Speech Language Pathologists and Audiologists Advisory Board based on input from two of its workgroups. The advisory board agreed with the recommended changes from both workgroups, and those recommended changes are included in these proposed rules.

First, the Licensing Workgroup recommended changes to address how a licensee may provide proof of licensure to a client when providing telehealth services and services outside of an office setting. This workgroup recommended changes to §111.151, which currently requires a licensee to display a license certificate or carry a license identification card. The requirement to always carry a license while providing services is not convenient and can be burdensome in some clinical settings. The proposed rules provide an additional option and allow a licensee to provide proof of licensure to a requestor through the Department's online license search.

Second, the Standard of Care Workgroup recommended changes to address cognition screenings as part of the communication screenings. This workgroup recommended changes to §111.190 to add provisions on cognition screening as it relates to communication function. Cognition plays an important part in understanding communication, and screening for communication-related cognition issues will allow providers to recommend therapy or rehabilitation. The proposed rules provide that cognitive processes affecting communication function may be screened for under communication screening.

Four-Year Rule Review Changes

The proposed rules implement select changes from Department staff as a result of the four-year rule review conducted under Government Code §2001.039. The Department conducted the required four-year review of the rules under 16 TAC Chapter 111, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Reviews, 45 TexReg 7281, October 9, 2020. Adopted Rule Reviews, 46 TexReg 2050, March 26, 2021). In response to the Notice of Intent to Review that was published, the Department received public comments regarding 16 TAC Chapter 111, but none of those public comments affect these proposed rules.

The proposed rules include select changes from Department staff based on the Department's review of the rules during the rule review process. These changes include clarification and clean-up changes to existing rules and updates to statute and rule citations.

Technical Corrections

The proposed rules make technical corrections from two previous rulemakings: the emergency telehealth rules (Emergency Rules, 46 TexReg 5313, August 27, 2021) and the comprehensive telehealth rules (Proposed Rules, 46 TexReg 5698, September 10, 2021. Adopted Rules, 46 TexReg 9021, December 24, 2021). In the previous rulemakings, the "in-person" supervision requirement was removed throughout the rules package in multiple rules (both rulemakings); the definitions of "direct supervision" and "indirect supervision" were amended (both rulemakings); and a new definition of "tele-supervision" was added that replaced former language regarding supervision through telehealth or telepractice/telehealth (comprehensive rulemaking). The preambles for those rules explained that the rules allow for direct and indirect supervision to be performed through tele-supervision and that in-person supervision is not required.

The previous rulemakings amended §111.50(e) regarding supervision of speech-language pathology assistants, and the preambles stated: "Subsection (e) is amended to allow supervision to be performed through tele-supervision and not require in-person supervision." The "in-person" reference was removed from the introduction paragraph of §111.50(e), but inadvertently was not removed from paragraphs (e)(4) and (e)(6). The proposed rules make technical corrections to remove the remaining "in-person" references under §111.50(e).

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Speech-Language Pathologists and Audiologists Advisory Board at its meeting on October 31, 2023. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The proposed rules amend §111.1. Authority and Applicability. The proposed rules change the name of the section from "Authority" to "Authority and Applicability." The proposed rules amend subsection (a) to identify the other statutes that are implemented by the rules in Chapter 111. The proposed rules also add new subsection (b) to explain that the Chapters 60 and 100 rules also apply to the Speech-Language Pathologists and Audiologists program. This new provision replaces the rules under Subchapter O, §111.140, Rules, which are being repealed.

Subchapter C. Examinations.

The proposed rules amend §111.23, License Examination--Jurisprudence Examinations. The proposed rules change the name of the section from "License Examination--Jurisprudence Examination" to "License Examination--Jurisprudence Examinations." The proposed rules amend subsection (a) to recognize that there are two separate jurisprudence exams - one for speech-language pathology and another for audiology; and amend subsection (b) to update the reference to examinations. The proposed rules also create separate provisions for the speech-language pathology jurisprudence examination and the audiology jurisprudence examination. The current general provision under subsection (c) is amended to apply only to the speech-language pathology jurisprudence examination, and a separate provision for the audiology jurisprudence examination is being added as new subsection (d). There are no substantive changes to these provisions.

Subchapter F. Requirements for Assistant in Speech-Language Pathology License.

The proposed rules amend §111.50, Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience. The proposed rules make technical corrections to §111.50(e) from two previous rulemakings as discussed above. Under subsection (e), the proposed rules remove the "in-person" references under paragraphs (e)(4) and (e)(6).

Subchapter O. Responsibilities of the Commission and the Department.

The proposed rules repeal Subchapter O, Responsibilities of the Commission and the Department, and §111.140, Rules. These explanatory provisions are no longer necessary, since sufficient time has passed since the program was transferred to the Department. New provisions regarding the applicability of the rules under Chapters 60 and 100 have been included in the changes to §111.1, Authority and Applicability. The rules under Chapters 60 and 100 have broader applicability than the specific provisions cited in §111.140.

Subchapter P. Responsibilities of the Licensee and Code of Ethics.

The proposed rules amend §111.150, Changes of Name, Address, or Other Information. The proposed rules update subsection (a) to provide that a licensee notify the Department of any changes to the specified information in a form and manner prescribed by the Department.

The proposed rules amend §111.151, Consumer Information, Display of License, and Proof of Licensure. The proposed rules reflect the recommendations from the Speech-Language Pathology and Audiology Advisory Board with input from its Licensing Workgroup as discussed above. The proposed rules change the name of the section from "Consumer Information and Display of License" to "Consumer Information, Display of License, and Proof of Licensure." The proposed rules add a new subsection (e), which requires a licensee, upon request, to provide proof of licensure to a client by showing the current license certificate, the current license identification card, or the current results of a license search on the Department's website.

The proposed rules amend §111.155, Standards of Ethical Practice (Code of Ethics). The proposed rules update the statutory citation in subsection (a)(16).

Subchapter Q. Fees.

The proposed rules amend §111.160, Fees. The proposed rules update the cross-referenced fee provisions in subsections (k) - (m) to use updated, standardized fee language.

Subchapter T. Screening Procedures.

The proposed rules amend §111.190, Communication Screening. The proposed rules reflect the recommendations from the Speech-Language Pathology and Audiology Advisory Board with input from its Standard of Care Workgroup as discussed above. The proposed rules amend subsection (a) to clarify that individuals licensed under the Act may conduct communication screenings. In addition, the proposed rules amend subsection (b) to provide that communication screenings may include cursory assessments of cognition to determine if further testing is indicated, and to provide that the aspects of cognition to be screened are any cognitive processes affecting communication function. Finally, the proposed rules amend subsection (c) to provide that cognition screenings should be conducted in the client's dominant language and primary mode of communication.

The proposed rules amend §111.192, Newborn Hearing Screening. The proposed rules update the rule citation in subsection (b) to reflect the Health and Human Services Commission's transfer of the rules related to Early Childhood Intervention Services to a new rule chapter in the Texas Administrative Code (TAC).

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 or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon also 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 government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be as follows.

The proposed rules add cognition screening as it relates to communication function. Cognition plays an important part in understanding communication, and screening for communication-related cognition issues will allow providers to recommend therapy or rehabilitation.

The proposed rules will allow a license holder to provide proof of licensure to a requestor through TDLR's online license search. The requirement to always carry a license while providing services can be burdensome in some clinical settings, and this change reduces burdens while still ensuring public protection.

The proposed rules include clarification and clean-up changes to existing rules and updates to the statute and rule citations. These changes will ensure that the rules are clear and that they reflect the current requirements.

The proposed rules also make technical corrections. The proposed rules remove the remaining "in-person" language that acts as a restriction on supervision of SLP assistants. This change will provide additional flexibility to supervisors and supervisees and will align with previous rule changes.

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 repeal an existing regulation by eliminating an in-person requirement for supervision. The proposed rules expand an existing regulation by providing that cognition screening as it relates to communication function may be conducted. The proposed rules expand an existing regulation by allowing a person to provide proof of licensure through the Department's online license search.

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.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §111.1

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupa-

tions Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.1. Authority and Applicability.

(a) This chapter is promulgated under the authority of [~~the~~] Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable. Specific provisions within this chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 111, 112, and 116.

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

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 December 8, 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 C. EXAMINATIONS

16 TAC §111.23

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.23. License Examination--Jurisprudence Examinations [~~Examination~~].

(a) The department shall develop and administer separate jurisprudence examinations in speech-language pathology and audiology. The [~~a~~] jurisprudence examination is used to determine an applicant's knowledge of the Act, this chapter, and any other applicable laws of this state affecting the practice of speech-language pathology or audiology.

(b) The department shall revise the jurisprudence examinations [~~examination~~] as needed.

(c) An applicant [~~All applicants~~] for licensure as a speech-language pathologist, a speech-language pathology intern, or a speech-language pathology assistant shall submit proof of successful completion of the speech-language pathology jurisprudence examination at the time of application, unless applying for an upgrade. The jurisprudence examination must be completed no more than 12 months prior to the date of licensure application.

(d) An applicant for licensure as an audiologist, an audiology intern, or an audiology assistant shall submit proof of successful completion of the audiology jurisprudence examination at the time of application, unless applying for an upgrade. The jurisprudence examination must be completed no more than 12 months prior to the date of licensure application.

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

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SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.50

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.50. Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience.

(a) - (d) (No change.)

(e) An applicant who has not acquired the twenty-five (25) hours of clinical observation and twenty-five (25) hours of clinical experience referenced in subsection (a)(3), shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. All hours must be completed under direct supervision. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in

§111.55 and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

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

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit a statement or information that the licensed assistant successfully completed the clinical observation and clinical assisting experience and that all hours worked by the licensed assistant were under the [~~in-person,~~] direct supervision of the licensed speech-language pathologist. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) (No change.)

(6) A licensed assistant may continue to practice under the [~~in-person,~~] direct supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the department evaluates the documentation identified in paragraph (4). All hours worked by the licensed assistant must be under the [~~in-person,~~] direct supervision of the licensed speech-language pathologist.

(7) (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.

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SUBCHAPTER O. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §111.140

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed repeal.

§111.140. Rules.

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

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Doug Jennings
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SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§111.150, 111.151, 111.155

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.150. Changes of Name, Address, or Other Information.

(a) A licensee is required to provide current name, address, telephone number, and employment information. The licensee shall notify the department of any changes within thirty (30) days of such changes in a form and manner prescribed by the department [~~on a department-approved form or using a department-approved method~~].

(b) A request to change the name currently on record must be submitted in writing with a copy of a divorce decree, marriage certificate, legal name change document, or social security card showing the new name.

(c) To receive a duplicate license, the licensee shall submit the duplicate/replacement fee required under §111.160.

§111.151. Consumer Information, [~~and~~] Display of License, and Proof of Licensure.

(a) A licensee shall notify each client of the name, mailing address, telephone number and website of the department for the purpose of directing complaints to the department. A licensee shall display this notification:

(1) on a sign prominently displayed in the primary office or place of employment of the licensee, if any; and

(2) on a written document such as a written contract, a bill for service, or office information brochure provided by the licensee to a client or third party.

(b) A licensee shall display the license certificate in the primary office or place of employment. In the absence of a primary office or place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current license identification card.

(c) A licensee shall not display a photocopy of a license certificate or carry a photocopy of an identification card in lieu of the original

document. A file copy shall be clearly marked as a copy across the face of the document.

(d) A licensee shall not make any alteration on a license certificate or identification card.

(e) Upon request, a licensee shall provide proof of licensure to a client by showing the current license certificate, the current license identification card, or the current results of a license search on the department's website.

§111.155. Standards of Ethical Practice (Code of Ethics).

(a) A licensee shall:

(1) - (15) (No change.)

(16) be subject to disciplinary action by the department if the licensee is issued a written reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, [~~Chapter 56, Subchapter B (effective until January 1, 2021) and~~] Chapter 56B [~~(effective on January 1, 2021)~~];

(17) - (18) (No change.)

(b) (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.

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SUBCHAPTER Q. FEES

16 TAC §111.160

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.160. Fees.

(a) - (j) (No change.)

(k) Late renewal fees for licenses issued under this chapter are provided under §60.83 [~~of this title (relating to Late Renewal Fees)~~].

(l) A dishonored [~~dishonored/returned check or~~] payment fee is the fee prescribed under §60.82 [~~of this title (relating to Dishonored Payment Device)~~].

(m) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 [~~of this title (relating to Criminal History Evaluation Letters)~~].

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 T. SCREENING PROCEDURES

16 TAC §111.190, §111.192

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.190. Communication Screening.

(a) Individuals licensed under the Act may conduct [~~participate in~~] communication screening.

(b) Communication screening may [~~should~~] include cursory assessments of language, [~~and~~] speech, and cognition to determine if further testing is indicated. Formal instruments and informal observations may be used for the assessment. If the screening is not passed, a detailed evaluation is indicated.

(1) The aspects of language to be screened may include phonology, morphology, syntax, semantics, and pragmatics.

(2) The aspects of speech to be screened may include articulation or speech sound production, voice (including phonation and resonation), and fluency.

(3) The aspects of cognition to be screened are any cognitive processes affecting communication function.

(c) Language, [~~and~~] speech, and cognition screening should be conducted in the client's dominant language and primary mode of communication.

§111.192. Newborn Hearing Screening.

(a) Individuals licensed under the Act may participate in universal newborn hearing screening as defined by the Texas Health and Safety Code, Chapter 47.

(b) Individuals licensed under this Act are subject to 25 TAC Chapter 37, regarding reporting hearing screening or audiologic out-

comes to the Department of State Health Services (DSHS) through the designated electronic tracking system, and 26 TAC Chapter 350 [~~40 TAC Chapter 108~~], regarding referral of children under the age of three years to Early Childhood Intervention (ECI).

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

SUBCHAPTER A. STATE BOARD OF EDUCATION RULES

19 TAC §33.2

The State Board of Education (SBOE) proposes an amendment to §33.2, concerning distributions to the Available School Fund (ASF). The proposed amendment would reinsert information related to the Permanent School Fund (PSF) distribution policy that was mistakenly repealed when 19 TAC Chapter 33 was revised to implement Senate Bill (SB) 1232, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021, established the Texas PSF Corporation and transferred responsibilities to manage and invest the fund to the Texas PSF Corporation. As a result, SBOE rules in Chapter 33 were significantly revised and reorganized effective March 1, 2023.

The proposed amendment would reinstate mistakenly repealed language in §33.2 that addresses the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 17, 2023 meeting.

FISCAL IMPACT: Mike Meyer, deputy commissioner of finance, has determined that for the first five years 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: Texas Education Agency (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 reestablishing mistakenly repealed provisions to align with SB 1232, 87th Texas Legislature, Regular Session, 2021. The provisions would address the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.

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 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: Mr. Meyer 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 clarifying provisions related to distributions to the ASF required by the Texas Constitution, Article VII, §5(a)(1), that were mistakenly repealed when Chapter 33 was revised to implement SB 1232, 87th Texas Legislature, Regular Session, 2021. 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 or 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 December 22, 2023, and ends at 5:00 p.m. on January 22, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures. 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 December 22, 2023.

STATUTORY AUTHORITY. The amendment is proposed under Texas Constitution, Article VII, §5(a)(2), which authorizes the State Board of Education (SBOE) to make distributions from the

Permanent School Fund (PSF) to the available school fund with certain limits; and Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Constitution, Article VII, §5(a)(2) and (f).

§33.2. Distributions to the Available School Fund.

Each year, the State Board of Education (SBOE) shall determine whether a distribution to the Available School Fund (ASF) shall be made for the current state fiscal year. The SBOE shall determine whether such distribution is permitted under the Texas Constitution, Article VII, §5(a)(2). The annual determination for the current fiscal year shall include a projection of the expected total return of the Permanent School Fund (PSF) at the end of the current fiscal year and the realized returns during the nine preceding state fiscal years. Any one-year distribution to the ASF shall not exceed 6.0% of the average market value of the PSF, excluding real property managed, sold, or acquired under the Texas Constitution, Article VII, §4, as determined under the Texas Constitution, Article VII, §5(a)(1). When adopting the rate of distribution, the SBOE shall strive to balance the needs of current and future generations of Texas school children by attempting to maintain consistent levels of distributions per student and assets per student, after adjusting for inflation.

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 December 11, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-1497

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER C. ADOPTIONS BY REFERENCE

19 TAC §109.41

The State Board of Education (SBOE) proposes an amendment to §109.41, concerning budgeting, accounting, and auditing. The proposed amendment would adopt by reference the updated *Financial Accountability System Resource Guide* (FASRG), Version 19, which would include allowable costs for dyslexia and related disorders added by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.41. Revisions to the FASRG would align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting process means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the Account Code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the Account Code section of the FASRG (Module 1).

The FASRG, Version 19, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the SBOE and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under §109.41, and the commissioner adopts the FASRG by reference under 19 TAC §109.5001.

The following changes would be made to Modules 1-6 of the FASRG.

Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices

Module 1 aligns with current governmental accounting standards. Proposed Module 1 would include the following changes. Updates would be made to accounting codes and accounting guidance, which would include allowable costs for dyslexia and related disorders added by HB 3928, 88th Texas Legislature, Regular Session, 2023, and previous guidance would be clarified. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. In addition, school districts would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB).

Module 2, Special Supplement - Charter Schools

Module 2 aligns with current financial accounting reporting standards. Proposed Module 2 would include the following significant changes. Updates would be made to accounting codes and accounting guidance, including a requirement for the recording of Teacher Retirement System (TRS) on-behalf revenue and payments and the calculation for the amounts, and previous guidance would be clarified. The proposed module would establish financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The proposed module would also include

current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements would facilitate preparation of financial statements that conform to GAAP established by the Financial Accounting Standards Board (FASB).

Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts

Module 3 aligns with current financial accounting standards. Proposed Module 3 would include the following changes. Updates would be made to accounting codes and accounting guidance, which would include allowable costs for dyslexia and related disorders added by HB 3928, 88th Texas Legislature, Regular Session, 2023, as well as the addition of accounting codes for TRS on-behalf payments, and previous guidance would be clarified. Charter schools would be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the Texas Student Data System Public Education Information Management System. In addition, charter schools would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements would facilitate preparation of financial statements that conform to GAAP established by the FASB.

Module 4, Auditing

Module 4 aligns with current auditing standards. Proposed Module 4 would include the following changes. Updates would be made to accounting codes and accounting guidance, and previous guidance would be clarified. The proposed module would establish auditing requirements for Texas public school districts and charter schools and include current requirements from TEC, §44.008, as well as Code of Federal Regulations, Title 2, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements would facilitate preparation of financial statements that conform to GAAP established by the GASB.

Module 5, Purchasing

Module 5 aligns with current purchasing laws and standards. Proposed Module 5 would include the following changes. Updates would be made to purchasing guidance that has changed from previous legislation. Purchasing rules that needed additional explanation would be clarified. School districts and charter schools would be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System

Proposed Module 6 would include the following changes. Updates would be made to clarify language that needed additional explanation, and other changes would be made due to changes in law. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. The module would provide information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provide current guidance for compliance.

The FASRG is posted on the Texas Education Agency (TEA) website at https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 17, 2023 meeting.

FISCAL IMPACT: Mike Meyer, deputy commissioner of finance, has determined that for the first five years 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 and limit an existing regulation. The proposal would amend requirements and provide updated governmental accounting and auditing standards. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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: Mr. Meyer 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 ensuring that the provisions of the FASRG align with current governmental accounting and auditing standards for school districts and charter schools. 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 or 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 December 22, 2023, and ends at 5:00 p.m. on January 22, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures. 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 December 22, 2023.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.102(c)(32), which requires the State Board of Education (SBOE) to adopt rules concerning school district budgets and audits of school district fiscal accounts as required under TEC, Chapter 44, Subchapter A; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles. TEC, §44.007(b), requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor. TEC, §44.007(c), requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE. TEC, §44.007(d), requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Texas Student Data System Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.102(c)(32), 44.007(a)-(d), and 44.008(b).

§109.41. Financial Accountability System Resource Guide.

The rules for financial accounting are described in the official Texas Education Agency (TEA) publication Financial Accountability System Resource Guide, Version 19 [~~18.0~~], which is adopted by this reference as the agency's official rule. A copy is available on the TEA website with information related to financial compliance.

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 December 11, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-1497

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTING GUIDELINES

19 TAC §109.5001

The Texas Education Agency (TEA) proposes an amendment to §109.5001, budgeting, accounting, and auditing. The proposed amendment would adopt by reference the updated *Financial Accountability System Resource Guide* (FASRG), Version 19, which would include allowable costs for dyslexia and related disorders added by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.5001. Revisions to the FASRG would align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting process means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the Account Code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the Account Code section of the FASRG (Module 1).

The FASRG, Version 19, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the State Board of Education (SBOE) and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under

19 TAC §109.41, and the commissioner adopts the FASRG by reference under §109.5001.

The following changes would be made to Modules 1-6 of the FASRG.

Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices

Module 1 aligns with current governmental accounting standards. Proposed Module 1 would include the following changes. Updates would be made to accounting codes and accounting guidance, which would include allowable costs for dyslexia and related disorders added by HB 3928, 88th Texas Legislature, Regular Session, 2023, and previous guidance would be clarified. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. In addition, school districts would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB).

Module 2, Special Supplement - Charter Schools

Module 2 aligns with current financial accounting reporting standards. Proposed Module 2 would include the following significant changes. Updates would be made to accounting codes and accounting guidance, including a requirement for the recording of Teacher Retirement System (TRS) on-behalf revenue and payments and the calculation for the amounts, and previous guidance would be clarified. The proposed module would establish financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The proposed module would also include current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements would facilitate preparation of financial statements that conform to GAAP established by the Financial Accounting Standards Board (FASB).

Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts

Module 3 aligns with current financial accounting standards. Proposed Module 3 would include the following changes. Updates would be made to accounting codes and accounting guidance, which would include allowable costs for dyslexia and related disorders added by HB 3928, 88th Texas Legislature, Regular Session, 2023, as well as the addition of accounting codes for TRS on-behalf payments, and previous guidance would be clarified. Charter schools would be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the Texas Student Data System Public Education Information Management System. In addition, charter schools would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements would facilitate preparation of financial statements that conform to GAAP established by the FASB.

Module 4, Auditing

Module 4 aligns with current auditing standards. Proposed Module 4 would include the following changes. Updates would be made to accounting codes and accounting guidance, and previous guidance would be clarified. The proposed module would establish auditing requirements for Texas public school districts and charter schools and include current requirements from TEC, §44.008, as well as Code of Federal Regulations, Title 2, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements would facilitate preparation of financial statements that conform to GAAP established by the GASB.

Module 5, Purchasing

Module 5 aligns with current purchasing laws and standards. Proposed Module 5 would include the following changes. Updates would be made to purchasing guidance that has changed from previous legislation. Purchasing rules that needed additional explanation would be clarified. School districts and charter schools would be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System

Proposed Module 6 would include the following changes. Updates would be made to clarify language that needed additional explanation, and other changes would be made due to changes in law. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. The module would provide information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provide current guidance for compliance.

The FASRG is posted on the TEA website at https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide.

FISCAL IMPACT: Mike Meyer, deputy commissioner of finance, has determined that for the first five years 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 and limit an existing regulation. The proposal would amend requirements and provide updated governmental accounting and auditing standards. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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: Mr. Meyer 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 ensuring that the provisions of the FASRG align with current governmental accounting and auditing standards for school districts and charter schools. 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 December 22, 2023, and ends January 22, 2024. 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 December 22, 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), §7.102(c)(32), which requires the State Board of Education (SBOE) to adopt rules concerning school district budgets and audits of school district fiscal accounts as required under TEC, Chapter 44, Subchapter A; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles. TEC, §44.007(b), requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor. TEC, §44.007(c), requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE. TEC, §44.007(d), requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Texas Student Data System Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.102(c)(32), 44.007(a)-(d), and 44.008(b).

§109.5001. Financial Accountability System Resource Guide.

The rules for financial accounting are described in the official Texas Education Agency (TEA) publication Financial Accountability System Resource Guide, Version 19 [~~18.0~~], which is adopted by this reference as the agency's official rule. A copy is available on the TEA website with information related to financial compliance.

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 December 11, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-1497

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CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §112.26

The State Board of Education (SBOE) proposes an amendment to §112.26, concerning Grade 6 science. The proposed amendment would correct punctuation errors in one student expectation.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the September 2019 meeting, SBOE members were asked to designate content advisors for the review and revision of the science Texas Essential Knowledge and Skills (TEKS). In December 2019, applications to serve on science TEKS review work groups were posted on the Texas Education Agency (TEA) website. Additionally, in December 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the science TEKS. TEA staff provided applications for the science review work groups to SBOE members on a monthly basis from December 2019 to June 2020 and in September, October, and December 2020. At the January 2020 SBOE meeting, the SBOE provided specific guidance for the TEKS review work groups.

Also in January 2020, science TEKS review content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the science TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in February 2020 to review survey results, content advisor consensus recommendations, and the SBOE's guidance to work groups to develop recommendations for how science TEKS review work groups can address these areas. Work Group B was convened virtually in June 2020 to develop recommendations for four high school science courses: Biology, Chemistry, Integrated Physics and Chemistry, and Physics. In November 2020, the SBOE approved for second reading and final adoption proposed new §§112.41-112.45 for implementation beginning in the 2023-2024 school year.

Work Group D was convened for monthly meetings from November 2020-February 2021 to develop recommendations for TEKS for five additional high school science courses: Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, and a new course Specialized Topics in Science. In June 2021, the board gave final approval to the additional high school science courses. Specialized Topics in Science was approved for implementation beginning in the 2022-2023 school year. Aquatic Science, Astronomy, Earth and Space Science, and Environmental Systems were approved for implementation beginning in the 2024-2025 school year.

Between August and November 2020, Work Group C convened for a series of virtual meetings to develop recommendations for the Grades 6-8 science TEKS. Work Group E was convened for monthly meetings between January and March 2021 to develop recommendations for the science TEKS for Kindergarten-Grade 5. Work Groups C and E were reconvened in May and June 2021 to address public feedback and revise their draft recommendations. Work Group F was convened for a series of virtual meetings in July 2021 to address SBOE feedback provided at the April and June 2021 SBOE meetings, vertically align the elementary and middle school standards, meet with content advisors, and finalize the draft recommendations for the Kindergarten-Grade 8 TEKS for science. At the September 2021 SBOE meeting, the board approved for first reading and filing authorization proposed new TEKS for Kindergarten-Grade 5 science. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new 19 TAC §§112.1-112.7 and 112.25-112.28.

Following adoption of the revised standards, an error was discovered in one Grade 6 student expectation. An additional comma changed the intended meaning of the student expectation.

The proposed amendment would remove the additional comma from subsection (b)(11)(A) and make a technical edit to punctuation at the end of the student expectation.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 17, 2023 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years 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, 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 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: Ms. Martinez 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 correcting the error prior to the implementation of the new standards in the 2024-2025 school year to ensure that students receive instruction on the intended content. 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 or 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 December 22, 2023, and ends at 5:00 p.m. on January 22, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures. 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 December 22, 2023.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which

requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§112.26. Science, Grade 6, Adopted 2021.

(a) (No change.)

(b) Knowledge and skills.

(1) - (10) (No change.)

(11) Earth and space. The student understands how resources are managed. The student is expected to:

(A) research and describe why resource management is important in reducing global energy[,] poverty, malnutrition, and air and water pollution;[,] and

(B) (No change.)

(12) - (13) (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 December 11, 2023.

TRD-202304669
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.36, §213.37

Introduction. The Texas Board of Nursing (Board) proposes new §213.36, relating to Alleged Standard of Care Violations by Advanced Practice Registered Nurses and new §213.37, relating to Disclosure of Expert Reviewer's Report. These rules are proposed under the authority of the Occupations Code § 301.151 and are necessary for compliance with the statutory mandates found in Texas Occupations Code §§ 301.457, 301.4575, and 301.464.

During the 88th Legislative Session, the Texas Legislature enacted SB 1343 which requires that complaints alleging a standard-of-care violation by an Advanced Practice Registered Nurse (APRN) be reviewed by an expert reviewer, appointed by the Board, who is an APRN practicing in the same advanced practice role and with the same population focus as the APRN who is the subject of the complaint. The bill further requires that the appointed expert reviewer determine whether the APRN violated the standard-of-care applicable to the circumstances of the allegation, record the expert reviewer's conclusions in a report, and submit the report to the Board. Before initiating informal proceedings involving the APRN, the Board must provide notice of the proceedings along with a deidentified copy of the expert reviewer's report. The proposed rule sections implement these statutory requirements.

Section by Section Overview

Proposed new 22 Texas Administrative Code §213.36 sets forth the process the Board must follow when investigating an alleged standard of care violation by an APRN. Proposed §213.36(a) implements Tex. Occ. Code § 301.457(h) by establishing that the Board shall appoint an APRN reviewer to assist in the investigation in the same practice role with the same population focus if the Board determines that an act of the APRN likely falls below an applicable standard of care. Proposed §213.36(b) implements Tex. Occ. Code § 301.457(i), mirroring the statutory language regarding when the Board may not refer a complaint to against an APRN to an APRN reviewer. Proposed §213.36(c) implements Tex. Occ. Code § 301.4575(1)&(2), mirroring the statutory language regarding the procedures for an advanced practice registered nurse review. Proposed §213.36(d) implements Tex. Occ. Code § 301.4575 by providing guidance as to the contents of the preliminary report to be submitted by the reviewer.

Proposed new 22 Texas Administrative Code §213.37 sets forth the procedure for the disclosure of the expert reviewer's report. This new section implements Tex. Occ. Code § 301.464(b) by providing that the notice of any informal proceeding include a copy of the expert report with any identifying information other than the role and population focus of the expert reviewer redacted.

Fiscal Note. Kristin Benton, RN, DNP, Executive Director, has determined that for each year of the first five years the proposed new sections will be in effect, there will be no anticipated change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Dr. Benton has also determined that for each year of the first five years that the proposed rules are in effect, the anticipated public benefit will be the adoption of rules that comply with statutory mandates.

There are no new anticipated costs of compliance associated with the proposal. The proposed rules do not impose any requirement or condition on board regulated entities. Thus, the Board does not anticipate any new costs of compliance resulting from the proposal. Further, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045(b) because the proposed rule is not anticipated to result in new costs of compliance, is necessary to protect the health, safety, and welfare of the residents of this state, and is necessary to implement legislation, as provided by §2001.0045(c).

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Section 2006.002(c-1) requires that the regulatory analysis "consider, if consistent with the health, safety,

and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

These proposed rules, mandated by statute, cannot be reasonably expected to result in any costs of compliance for small businesses, micro businesses, or rural communities. As such, the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not as the Board intends to shift necessary resources to comply with the statutory mandate; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal references new statutory requirements for the Board to follow in investigations but does not add additional requirements for licensees; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board 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.

Request for Public Comment. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. These rule sections are proposed under the authority of Texas Occupations Code §§ 301.151 and 301.457.

Cross Reference to Statute. The following statutes are affected by this proposal: Texas Occupations Code §§ 301.151, 301.457, 301.4575 and 301.464.

§213.36. Alleged Standard of Care Violations by Advanced Practice Registered Nurses.

(a) If, during the course of investigating a complaint made against an APRN, the board determines that an act of the APRN likely falls below an acceptable standard of care, the board shall appoint another APRN as an expert reviewer to assist in the investigation. An APRN appointed as an expert reviewer under this section must practice in the same advanced practice role with the same population focus as the APRN who is the subject of the complaint.

(b) The board may not refer a complaint against an APRN to an expert reviewer appointed under this section if the act alleged is:

(1) within the scope of practice applicable to a nurse who is not an advanced practice registered nurse; or

(2) considered unprofessional conduct, as described by Occupations Code, § 301.452(b)(10).

(c) An expert reviewer appointed under this section to review allegations against an APRN shall:

(1) determine whether the APRN violated the standard of care applicable to the circumstances of the allegation; and

(2) issue to the board a preliminary written report of the expert reviewer's conclusions.

(d) A report issued by an expert reviewer under this section must include:

(1) relevant facts concerning the medical care rendered;

(2) the applicable standard of care;

(3) application of the standard of care to the relevant facts;

(4) a determination of whether the standard of care has been violated; and

(5) a summation of the expert reviewer's opinion.

§213.37. Disclosure of Expert Reviewer's Report.

(a) Before initiating informal proceedings to resolve a complaint referred to an expert reviewer under §213.36 of this title (relating to Alleged Standard of Care Violations by Advanced Practice Registered Nurses), the board shall provide a copy of the expert reviewer's report issued under that section to the advanced practice registered nurse who is the subject of the complaint.

(b) Before providing an expert reviewer's report, the board shall redact:

(1) identifying information of the expert reviewer, other than the expert reviewer's role and population focus; and

(2) confidential information, as described by Occupations Code, §§ 301.460 and 301.466, or that is otherwise privileged or confidential under the Nursing Practice Act or other applicable 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.

Filed with the Office of the Secretary of State on December 7, 2023.

TRD-202304590
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 305-6879

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CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.14

The Texas Board of Nursing (Board) proposes new 22 Texas Administrative Code §214.14, relating to use of vendor created standardized examinations by a private school of nursing in a manner that may deny students graduation and opportunity to take the NCLEX (National Council Licensure Examination) licensure exam. The rule is being proposed under the authority of the Occupations Code § 301.151 and Tex. Occ. Code § 301.1571, effective September 1, 2023.

Background.

In 2017, the Texas Board of Nursing (BON) issued the Board Education Guideline 3.7.4.a in response to numerous reports and questions from students, parents, and policymakers about the use of vendor-created standardized examinations, especially when these exams are used to deny students the opportunity to take the NCLEX licensure exam. Many vocational and professional nursing education programs had incorporated the use of these exams into the curriculum in various ways. At the time, a survey revealed many nursing programs were using these exams as a graduation requirement or to deny students from receiving their affidavit of graduation, which is required to be submitted to register for the NCLEX licensure exam.

Although the BON had no purview over a nursing program's decisions to use these exams, BON staff met with three vendors to clarify the intended purposes for these exams and to assist nursing programs in their use. All vendors agreed standardized examinations are one of many measures of program quality. With input from the vendors, Board Education Guideline 3.7.4.a was drafted which outlines the effective uses of vendor-created standardized exams as an evaluation of student progress and cautions nursing programs from using these exams in a high-stakes manner. The guideline recommends that these exams should not prevent students from progressing or graduating.

Six years later, a second survey revealed that despite BON's guideline and cautions, some nursing programs disregarded BON's recommendation and continue to use vendor-created standardized exams in a high-stakes manner.

During the 88th Legislative Session, the Texas Legislature enacted S.B. 1429 which authorized the BON to adopt rules to prohibit the use of vendor-created standardized examinations as a graduation requirement or to deny students an affidavit of graduation.

Section by Section Overview.

22 Texas Administrative Code §214.14(a) prohibits a vocational nursing education program from using a student's score on a standardized examination as a graduation requirement; or as the basis for denying the student an affidavit of graduation.

22 Texas Administrative Code §214.14(b) prohibits the vocational nursing education program from using a student's score to account for more than 10 (ten) percent of the student's final grade in any course provided under the program.

22 Texas Administrative Code §214.14(c) lists the only permissible ways vocational nursing education program may use a standardized examination prepared by a private entity. These include letting students familiarize themselves with computerized testing, using scores as a component of program admissions criteria, evaluating a student's strengths and weaknesses for remediation purposes; and identifying students who are experiencing academic difficulties and require early remediation. The rule also allows use of standardized test scores in assessing the effectiveness of the program by providing trend data, comparisons with nationwide averages, assessment of student knowledge of program content, assessment of success in curriculum revisions or changes, and as a measure of student mastery of program content.

22 Texas Administrative Code §214.14(d) prohibits the vocational nursing education program from requiring the student, based on the student's score, to attend any course offered by the private entity that created the standardize exam.

22 Texas Administrative Code §214.149(e) clarifies that failure to comply with the requirements of this section will subject a vocational nursing education program to board disciplinary action, including a change in the program's approval status.

Fiscal Note. Dr. Kristin Benton, DNP, RN, Executive Director, has determined that for each year of the first five years the proposal will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Dr. Benton has also determined that for each year of the first five years the proposal is in effect, the anticipated public benefit will be the adoption of rules that comply with SB 1429 and codify the appropriate and recommended uses for standardized exams outlined in Board Education Guideline 3.7.4. and prevent the use of these exams as way of denying graduation and opportunity to take the NCLEX licensure exam by those students who have otherwise completed the approved curriculum. There are no anticipated costs of compliance with the proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary for consistency with the statutory requirements of SB 1429.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses

the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal amends existing regulations for consistency with the statutory requirements of SB 1429; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 1801 Congress, Suite 10-200, Austin, Texas 78701, or by e-mail to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The proposal is proposed under the authority of the Occupations Code §301.151 and SB 1429, which amends the Occupations Code § 301.1571

Texas Occupations Code § 301.151 addresses the Board's rulemaking authority. Texas Occupations Code § 301.1571 relates to the use of standardized examination by a school of nursing and educational program and imposes the duty upon the Board of Nursing to adopt rules specifically to implement its provisions.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §§ 301.151 and 301.1571

§214.14. Use of Standardized Examination Prepared by Private Entity.

(a) A vocational nursing education program shall not use a student's score on a standardized examination prepared by a private entity:

(1) as a graduation requirement; or

(2) as the basis for denying the student an affidavit of graduation.

(b) A vocational nursing education program shall not use a student's score on one or more standardized examinations prepared by a private entity to account for more than 10 percent of the student's final grade in any course provided under the program. At least 90 percent of a student's final grade in each course provided under the program must be based on metrics other than the student's scores on standardized examinations prepared by a private entity.

(c) A vocational nursing education program may use a standardized examination prepared by a private entity only to:

(1) familiarize students with computerized testing;

(2) assess potential or enrolled students, including by using student scores on standardized examinations prepared by a private entity:

(A) as one component of program admissions criteria;

(B) in evaluating a student's strengths and weaknesses for remediation purposes; and

(C) to identify students who are experiencing academic difficulties and require early remediation; and

(3) assess the effectiveness of the program by providing:

(A) trend data on student performance;

(B) a comparison of student performance with nationwide averages;

(C) feedback regarding student knowledge of program content;

(D) data necessary to monitor the effectiveness of specific course, level, and program curriculum revisions;

(E) data necessary to evaluate the effectiveness of program curriculum content for revision purposes; and

(F) a measure of student mastery of program content.

(d) A vocational nursing education program that determines, on the basis of a student's score on a standardized examination by a private entity, that the student is in need of remediation, shall not require the student to attend any course offered by the private entity that created the standardized examination.

(e) Failure to comply with the requirements of this section will subject a vocational nursing education program to board disciplinary action, including a change in the program's approval status under §214.4 of this title (relating to Approval).

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 December 8, 2023.

TRD-202304604
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 305-6879

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.14

The Texas Board of Nursing (Board) proposes new 22 Texas Administrative Code §215.14, relating to use of vendor created standardized examinations by a private school of nursing in a

manner that may deny students graduation and opportunity to take the NCLEX (National Council Licenser Examination) licensure exam. The rule is being proposed under the authority of the Texas Occupations Code § 301.151 and Texas Occupations Code § 301.1571, effective September 1, 2023.

Background.

In 2017, the Texas Board of Nursing (BON) issued the Board Education Guideline 3.7.4.a in response to numerous reports and questions from students, parents, and policymakers about the use of vendor-created standardized examinations, especially when these exams are used to deny students the opportunity to take the NCLEX licensure exam. Many vocational and professional nursing education programs had incorporated the use of these exams into the curriculum in various ways. At the time, a survey revealed many nursing programs were using these exams as a graduation requirement or to deny students from receiving their affidavit of graduation, which is required to be submitted to register for the NCLEX licensure exam.

Although the BON had no purview over a nursing program's decisions to use these exams, BON staff met with three vendors to clarify the intended purposes for these exams and to assist nursing programs in their use. All vendors agreed standardized examinations are one of many measures of program quality. With input from the vendors, Board Education Guideline 3.7.4.a was drafted which outlines the effective uses of vendor-created standardized exams as an evaluation of student progress and cautions nursing programs from using these exams in a high-stakes manner. The guideline recommends that these exams should not prevent students from progressing or graduating.

Six years later, a second survey revealed that despite BON's guideline and cautions, some nursing programs disregarded BON's recommendation and continue to use vendor-created standardized exams in a high-stakes manner.

During the 88th Legislative Session, the Texas Legislature enacted S.B. 1429 which authorized the BON to adopt rules to prohibit the use of vendor-created standardized examinations as a graduation requirement or to deny students an affidavit of graduation.

Section by Section Overview.

22 Texas Administrative Code §215.14(a) prohibits a professional nursing education program from using a student's score on a standardized examination as a graduation requirement; or as the basis for denying the student an affidavit of graduation.

22 Texas Administrative Code §215.14(b) prohibits the professional nursing education program from using a student's score to account for more than 10 (ten) percent of the student's final grade in any course provided under the program.

22 Texas Administrative Code §215.14(c) lists the only permissible ways professional nursing education program may use a standardized examination prepared by a private entity. These include letting students familiarize themselves with computerized testing, using scores as a component of program admissions criteria, evaluating a student's strengths and weaknesses for remediation purposes; and identifying students who are experiencing academic difficulties and require early remediation. The rule also allows use of standardized test scores in assessing the effectiveness of the program by providing trend data, comparisons with nationwide averages, assessment of student knowledge of program content, assessment of success in curriculum revisions or changes, and as a measure of student mastery of program content.

22 Texas Administrative Code §215.14(d) prohibits the professional nursing education program from requiring the student, based on the student's score, to attend any course offered by the private entity that created the standardize exam.

22 Texas Administrative Code §215.14(e) clarifies that failure to comply with the requirements of this section will subject a professional nursing education program to board disciplinary action, including a change in the program's approval status.

Fiscal Note. Dr. Kristin Benton, DNP, RN, Executive Director, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Dr. Benton has also determined that for each year of the first five years the proposed new rule is in effect, the anticipated public benefit will be the adoption of rules that comply with SB 1429 and codify the appropriate and recommended uses for standardized exams outlined in Board Education Guideline 3.7.4. and prevent the use of these exams as way of denying graduation and opportunity to take the NCLEX licensure exam by those students who have otherwise completed the approved curriculum. There are no anticipated costs of compliance with the proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed new rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary for consistency with the statutory requirements of SB 1429.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed new rule will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the

Board; (v) the proposal amends existing regulations for consistency with the statutory requirements of SB 1429; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board 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.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 1801 Congress, Suite 10-200, Austin, Texas 78701, or by e-mail to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The proposed new rule is proposed under the authority of the Texas Occupations Code §301.151 and SB 1429, which amends the Texas Occupations Code § 301.1571.

Section 301.151 addresses the Board's rulemaking authority. Section 301.1571 relates to the use of standardized examination by a school of nursing and educational program and imposes the duty upon the Board of Nursing to adopt rules specifically to implement its provisions.

Cross Reference To Statute. The following statutes are affected by this proposal: Texas Occupations Code §§ 301.151 and 301.1571.

§215.14. Use of Standardized Examination Prepared by Private Entity.

(a) A professional nursing education program shall not use a student's score on a standardized examination prepared by a private entity:

(1) as a graduation requirement; or

(2) as the basis for denying the student an affidavit of graduation.

(b) A professional nursing education program shall not use a student's score on one or more standardized examinations prepared by a private entity to account for more than 10 percent of the student's final grade in any course provided under the program. At least 90 percent of students' final grade in each course provided under the program must be based on metrics other than students' scores on standardized examinations prepared by a private entity.

(c) A professional nursing education program may use a standardized examination prepared by a private entity only to:

(1) familiarize students with computerized testing;

(2) assess potential or enrolled students, including by using student scores on a standardized examination prepared by a private entity:

(A) as one component of program admissions criteria;

(B) in evaluating a student's strengths and weaknesses for remediation purposes; and

(C) to identify students who are experiencing academic difficulties and require early remediation; and

(3) assess the effectiveness of the program by providing:

(A) trend data on student performance;

(B) a comparison of student performance with nationwide averages;

(C) feedback regarding student knowledge of program content;

(D) data necessary to monitor the effectiveness of specific course, level, and program curriculum revisions;

(E) data necessary to evaluate the effectiveness of program curriculum content for revision purposes; and

(F) a measure of student mastery of program content.

(d) A professional nursing education program that determines, on the basis of a student's score on a standardized examination by a private entity, that the student is in need of remediation, shall not require the student to attend any course offered by the private entity that created the standardized examination.

(e) Failure to comply with the requirements of this section will subject a professional nursing education program to board disciplinary action, including a change in the program's approval status under §215.4 of this chapter (relating to Approval).

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 December 8, 2023.

TRD-202304605
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 305-6879

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.12

The Texas State Board of Pharmacy proposes amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. The amendments, if adopted, clarify that the requirements for obtaining an interim license for a military service member or military spouse do not affect rights that may be provided under federal law.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear regulations that reflect the relationship between complementary rights under federal law and Board rules. There is no anticipated adverse eco-

nomic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.12. Licenses for Military Service Members, Military Veterans, and Military Spouses.

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

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

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

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

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

(b) Alternative licensing procedure. For the purpose of §55.004, Occupations Code, an applicant for a pharmacist license who is a military service member, military veteran, or military spouse may complete the following alternative procedures for licensing as a pharmacist.

(1) Requirements for licensing by reciprocity. An applicant for licensing by reciprocity who meets all of the following requirements may be granted a temporary license as specified in this subsection prior to completing the NABP application for pharmacist license by reciprocity, and taking and passing the Texas Pharmacy Jurisprudence Examination. The applicant shall:

(A) complete the Texas application for pharmacist license by reciprocity that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(B) meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements);

(C) present to the board proof of initial licensing by examination and proof that any current licenses and any other licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(D) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information, and such criminal history check does not reveal any disposition for a crime specified in §281.64 of this title (relating to Sanctions for Criminal Offenses) indicating a sanction of denial, revocation, or suspension;

(E) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b) of this title (relating to Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity); and

(F) provide documentation of eligibility, including:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if a military spouse.

(2) Requirements for an applicant whose Texas pharmacist license has expired. An applicant whose Texas pharmacist license has expired within five years preceding the application date:

(A) shall complete the Texas application for licensing that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(B) shall provide documentation of eligibility, including:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if a military spouse;

(C) shall pay the renewal fee specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); however, the applicant shall be exempt from the fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal);

(D) shall complete approved continuing education requirements according to the following schedule:

(i) if the Texas pharmacist license has been expired for more than one year but less than two years, the applicant shall complete 15 contact hours of approved continuing education;

(ii) if the Texas pharmacist license has been expired for more than two years but less than three years, the applicant shall complete 30 contact hours of approved continuing education; or

(iii) if the Texas pharmacist license has been expired for more than three years but less than five years, the applicant shall complete 45 contact hours of approved continuing education; and

(E) is not required to take the Texas Pharmacy Jurisprudence Examination.

(3) A temporary license issued under this section is valid for no more than six months and may be extended, if disciplinary action is pending, or upon request, as otherwise determined reasonably necessary by the executive director of the board.

(4) A temporary license issued under this section expires within six months of issuance if the individual fails to pass the Texas Pharmacy Jurisprudence Examination within six months or fails to take the Texas Pharmacy Jurisprudence Examination within six months.

(5) An individual may not serve as pharmacist-in-charge of a pharmacy with a temporary license issued under this subsection.

(c) Expedited licensing procedure. For the purpose of §55.005, Occupations Code, an applicant for a pharmacist license who is a military service member, military veteran, or military spouse and who holds a current license as a pharmacist issued by another state may complete the following expedited procedures for licensing as a pharmacist. The applicant shall:

(1) meet the educational and age requirements specified in §283.3 of this title (relating to Educational and Age Requirements);

(2) meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs;

(3) complete the Texas and NABP applications for reciprocity. Any fraudulent statement made in the application for reciprocity is grounds for denial of the application. If such application is granted, any fraudulent statement is grounds for suspension, revocation, and/or cancellation of any license so granted by the board. The Texas application includes the following information:

(A) name;

(B) addresses, phone numbers, date of birth, and social security number; and

(C) any other information requested on the application;

(4) present to the board proof of initial licensing by examination and proof that their current license and any other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(5) pass the Texas Pharmacy Jurisprudence Examination with a minimum grade of 75. (The passing grade may be used for the purpose of licensure by reciprocity for a period of two years from the date of passing the examination.) Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved; and

(6) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b).

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacist license is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's license.

(1) A military service member who fails to renew their pharmacist license in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and license number of the pharmacist;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal).

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §295.8 of this title (relating to Continuing Education Requirements).

(e) Inactive status. The holder of a pharmacist license who is a military service member, a military veteran, or a military spouse who holds a pharmacist license and who is not engaged in the practice of pharmacy in this state may place the license on inactive status as specified in §295.9 of this title (relating to Inactive License). The inactive license holder:

(1) shall provide documentation to include:

(A) military identification indicating that the pharmacist is a military service member, military veteran, or military dependent, if a military spouse; and

(B) marriage certificate, if a military spouse;

(2) shall be exempt from the fees specified in §295.9(a)(1)(C) and §295.9(a)(2)(C) of this title;

(3) shall not practice pharmacy in this state; and

(4) may reactivate the license as specified in §295.9 of this title (relating to Inactive License).

(f) Interim license for military service member or military spouse. In accordance with §55.0041, Occupations Code, a military service member or military spouse who is currently licensed in good standing by a jurisdiction with licensing requirements that are substantially equivalent to the licensing requirements in this state may be issued an interim pharmacist license. The military service member or military spouse:

(1) shall provide documentation to include:

(A) a notification of intent to practice form including any additional information requested;

(B) 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 or military service member to whom the military spouse is married;

(C) a copy of the military service member or military spouse's military identification card; and

(D) verification from the jurisdiction in which the military service member or military spouse holds an active pharmacist license that the military service member or military spouse's license is in good standing;

(2) may not practice pharmacy in this state until issued an interim pharmacist license;

(3) may hold an interim pharmacist license only for the period during which the military service member or military service member to whom the military spouse is married is stationed at a military installation in this state, but not to exceed three years from the date of issuance of the interim license; and

(4) may not renew the interim pharmacist license.

(g) Subsection (f) of this section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

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

Filed with the Office of the Secretary of State on December 6, 2023.

TRD-202304567
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 305-8033

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CHAPTER 291. PHARMACIES
SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy proposes amendments to §291.74, concerning Operational Standards. The amendments, if adopted, specify prepackaging and labeling requirements for a participating provider to dispense donated prescription drugs under Chapter 442, Health and Safety Code, in accordance with House Bill 4332.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation in order to be consistent with state law;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.74. Operational Standards.

(a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class C pharmacy which changes location and/or name shall notify the board of the change as specified in §291.3 of this title.

(4) A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(5) A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(6) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(7) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(8) A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class C pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations).

(10) Class C pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy.

(11) A Class C pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) A Class C pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(13) A Class C pharmacy with an ongoing clinical pharmacy program that proposes to allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist shall make application to the board and submit any information specified on the application.

(14) A rural hospital that wishes to allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title (relating to Personnel), shall make application to the board and submit any information specified on the application.

(A) A rural hospital may not allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(B) Every two years, in conjunction with the application for renewal of the pharmacy license, the pharmacist-in-charge shall update the application for pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title and shall attest as required on the application.

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and/or freezer shall be maintained within a range compatible with the proper storage of drugs.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) data processing system including a printer or comparable equipment; and

(2) refrigerator and/or freezer and a system or device (e.g., thermometer) to monitor the temperature to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and regulations; and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text;

(3) a current or updated reference on injectable drug products;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal;

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph; and

(v) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph;

(iv) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days; and

(v) The pharmacist shall perform a drug regimen review as specified in subsection (g)(1)(B) of this section as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed seven (7) days; or

(II) If the facility has an average inpatient daily census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours.

(vi) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (B)(v)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable:

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days.

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(D) of this title, the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall be maintained in the pharmacy for two years and contain the following information:

(i) name of patient or location where floor stock is distributed;

(ii) name of device or drug, strength, and dosage form;

(iii) dose prescribed or ordered;

(iv) quantity distributed;

(v) time and date of the distribution; and

(vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall:

(i) verify and document the verification of all distributions made from the pharmacy in the absence of a pharmacist as soon as practical, but in no event more than seven (7) days from the time of such distribution;

(ii) perform a drug regimen review for all medication orders as specified in subsection (g)(1)(B) of this section and document such verification including any discrepancies noted by the pharmacist as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review as soon as practical, but in no event more than seven (7) days from the time of such distribution; or

(II) If the facility has an average daily inpatient census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours;

(iii) review any discrepancy noted by the pharmacist with the pharmacy technician(s) and make any change in procedures or processes necessary to prevent future problems; and

(iv) report any adverse events that have a potential for harm to a patient to the appropriate committee of the hospital that reviews adverse events.

(D) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (C)(ii)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(D) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to interchange, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any interchange; and

(iv) the practitioner authorizes pharmacists in the facility to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature;

(IV) quantity of the drug, if the quantity is greater than one; and

(V) name of the facility responsible for prepackaging the drug.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker;

(X) name, initials, or electronic signature of the responsible pharmacist; and

(XI) name of the facility receiving the prepackaged drug.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(v) The pharmacy shall have written procedure for the recall of any drug prepackaged for another Class C pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile preparations prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location, if not immediately administered;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Pharmacy technicians and pharmacy technician trainees may not receive oral medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

(II) handling, storage and disposal of cytotoxic drugs and waste;

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

(VII) reference materials;

(VIII) drug selection and procurement;

(IX) drug storage;

(X) controlled substances;

(XI) investigational drugs, including the obtaining of protocols from the principal investigator;

(XII) prepackaging and manufacturing;

(XIII) stop orders;

(XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;

(XV) physician orders;

(XVI) floor stocks;

(XVII) drugs brought into the facility;

(XVIII) furlough medications;

(XIX) self-administration;

(XX) emergency drug supply;

(XXI) formulary;

(XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;

(XXIII) control of drug samples;

(XXIV) outdated and other unusable drugs;

(XXV) routine distribution of patient medication;

(XXVI) preparation and distribution of sterile preparations;

(XXVII) handling of medication orders when a pharmacist is not on duty;

(XXVIII) use of automated compounding or counting devices;

(XXIX) use of data processing and direct imaging systems;

(XXX) drug administration to include infusion devices and drug delivery systems;

(XXXI) drug labeling;

(XXXII) recordkeeping;

(XXXIII) quality assurance/quality control;

(XXXIV) duties and education and training of professional and nonprofessional staff;

(XXXV) procedures for a pharmacy technician to verify the accuracy of work performed by another pharmacy technician, if applicable;

(XXXVI) operation of the pharmacy when a pharmacist in not on-site; and

(XXXVII) emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) Discharge Prescriptions. Discharge prescriptions must be dispensed and labeled in accordance with §291.33 of this title (relating to Operational Standards) except that certain medications packaged in unit-of-use containers, such as metered-dose inhalers, insulin pens, topical creams or ointments, or ophthalmic or otic preparation that are administered to the patient during the time the patient was a patient in the hospital, may be provided to the patient upon discharge provided the pharmacy receives a discharge order and the product bears a label containing the following information:

(A) name of the patient;

(B) name and strength of the medication;

(C) name of the prescribing or attending practitioner;

(D) directions for use;

(E) duration of therapy (if applicable); and

(F) name and telephone number of the pharmacy.

(7) Redistribution of Donated Prepackaged Prescription Drugs.

(A) A participating provider may dispense to a recipient donated prescription drugs that are prepackaged and labeled in accordance with §442.0515, Health and Safety Code, and this paragraph.

(B) Drugs may be prepackaged in quantities suitable for distribution to a recipient only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(C) The label of a prepackaged prescription drug a participating provider dispenses to a recipient shall indicate:

(i) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(ii) participating provider's lot number;

(iii) participating provider's beyond use date; and

(iv) quantity of the drug, if the quantity is greater than one.

(D) Records of prepackaged prescription drugs dispensed to a recipient shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) participating provider's lot number;

(iii) manufacturer or distributor;

(iv) manufacturer's lot number;

(v) manufacturer's expiration date;

(vi) quantity per prepackaged unit;

(vii) number of prepackaged units;

(viii) date packaged;

(ix) name, initials, or electronic signature of the prepacker; and

(x) written or electronic signature of the responsible pharmacist.

(E) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility:

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

(I) known allergies;

(II) rational therapy--contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions;

(X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) or (e)(3) of this section when a pharmacist is not on duty.

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

(i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and

(ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs to be taken home by the patient for self-administration from the emergency room. If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(A) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(B) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or controlled substances of the nature and type to meet the immediate needs of emergency room patients.

(C) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including necessary auxiliary labels) by the institutional pharmacy.

(D) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(vii) quantity supplied; and

(viii) unique identification number.

(E) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.

(F) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(v) quantity supplied; and

(vi) unique identification number.

(G) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

(i) name and address of the facility;

(ii) directions for use;

(iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;

(iv) quantity;

(v) facility's lot number and expiration date; and

(vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

(i) date supplied;

(ii) name of physician;

(iii) name of patient; and

(iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;

(v) quantity supplied; and

(vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order prior to withdrawal from the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may restock an automated medication supply system located outside of the pharmacy department with prescription drugs provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or

(ii) all of the following occur:

(I) the prescription drugs to restock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) either:

(-a-) the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacturer, that is shipped to the pharmacy; or

(-b-) if any manipulation of the product occurs in the pharmacy prior to restocking, such as repackaging or extemporaneous compounding, the product must be checked by a pharmacist; and

(III) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains unlabeled stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medication order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

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 December 6, 2023.

TRD-202304568
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 305-8033

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.10

The Texas State Board of Pharmacy proposes amendments to §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. The amendments, if adopted, clarify that the requirements for obtaining an interim registration for a military service member or military spouse do not affect rights that may be provided under federal law.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear regulations that

reflect the relationship between complementary rights under federal law and Board rules. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§297.10. Registration for Military Service Members, Military Veterans, and Military Spouses.

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

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

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

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

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

(b) Alternative registration procedure. For the purpose of §55.004, Occupations Code, an applicant for a pharmacy technician registration who is a military service member, military veteran, or military spouse may complete the following alternative procedures for registering as a pharmacy technician.

(1) An applicant who holds a current registration as a pharmacy technician issued by another state but does not have a current pharmacy technician certification certificate shall meet the requirements for registration as a pharmacy technician trainee as specified in §297.3 of this chapter (relating to Registration Requirements).

(2) An applicant who held a pharmacy technician registration in Texas that expired within the five years preceding the application date who meets the following requirements may be granted a pharmacy technician registration. The applicant:

(A) shall complete the Texas application for registration that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(B) shall provide documentation to include:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if the applicant is a military spouse; applicant's spouse is on active duty status;

(C) be exempt from the application fees paid to the board set forth in §297.4(a) and (b)(2) of this chapter (relating to Fees);

(D) shall meet all necessary requirements in order for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal any charge or conviction for a crime that §281.64 of this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension; and

(E) is not required to have a current pharmacy technician certification certificate.

(c) Expedited registration procedure. For the purpose of §55.005, Occupations Code, an applicant for a pharmacy technician registration who is a military service member, military veteran or military spouse and who holds a current registration as a pharmacy technician issued by another state or who held a pharmacy technician registration in Texas that expired within the five years preceding the application date may complete the following expedited procedures for registering as a pharmacy technician.

(1) The applicant shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years;

(B) have taken and passed a pharmacy technician certification examination approved by the board and have a current certification certificate;

(C) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees; and

(E) shall be exempt from the registration fee as specified in §297.4(b)(2) of this chapter.

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number.

(3) All applicants for renewal of an expedited pharmacy technician registration issued to a military service member, military veteran, or military spouse shall comply with the renewal procedures as specified in §297.3 of this chapter.

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacy technician registration is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's registration.

(1) A military service member who fails to renew their pharmacy technician registration in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and registration number of the pharmacy technician;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §297.3(d)(3) of this chapter.

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §297.8 of this title (relating to Continuing Education Requirements).

(e) Interim registration for military service member or military spouse. In accordance with §55.0041, Occupations Code, a military service member or military spouse who is currently registered in good standing by a jurisdiction with registration requirements that are substantially equivalent to the registration requirements in this state may be issued an interim pharmacy technician registration. The military service member or military spouse:

(1) shall provide documentation to include:

(A) a notification of intent to practice form including any additional information requested;

(B) 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 military spouse is married;

(C) a copy of the military service member or military spouse's military identification card; and

(D) verification from the jurisdiction in which the military service member or military spouse holds an active pharmacy technician registration that the military service member or military spouse's registration is in good standing;

(2) may not engage in pharmacy technician duties in this state until issued an interim pharmacy technician registration;

(3) may hold an interim pharmacy technician registration only for the period during which the military service member or military service member to whom the military spouse is married is stationed at a military installation in this state, but not to exceed three years from the date of issuance of the interim registration; and

(4) may not renew the interim pharmacy technician registration.

(f) Subsection (e) of this section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

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

Filed with the Office of the Secretary of State on December 6, 2023.

TRD-202304569
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 305-8033

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§553.3, 553.5, 553.7, 553.9, 553.17, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 553.37, 553.39, 553.47, 553.100, 553.101, 553.103, 553.104, 553.107, 553.111, 553.112, 553.113, 553.115, 553.122, 553.125, 553.131, 553.132, 553.135, 553.142, 553.211, 553.212, 553.215, 553.222, 553.225, 553.231, 553.232, 553.235, 553.241, 553.242, 553.245, 553.246, 553.253, 553.255, 553.257, 553.259, 553.301, 553.303, 553.305, 553.307, 553.309, 553.327, 553.331, 553.401, and 553.751; the repeal of §§553.43, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271, 553.272, 553.273, 553.275, 553.311, 553.351, 553.353, 553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.413, 553.415, 553.417, 553.419, 553.421,

553.423, 553.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439, 553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483, 553.501, 553.503, 553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.589, 553.591, 553.593, 553.595, 553.597, 553.601, 553.603, 553.651, 553.653, 553.655, 553.657, 553.659, 553.661, 553.701, 553.703, 553.705, 553.707, 553.709, and 553.711; and new §§553.45, 553.250, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271, 553.273, 553.275, 553.277, 553.279, 553.281, 553.283, 553.285, 553.287, 553.289, 553.291, 553.292, 553.293, 553.295, 553.328, 553.351, 553.401, 553.451, 553.501, 553.551, 553.601, 553.651, and 553.701 in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities.

BACKGROUND AND PURPOSE

The purpose of the proposal is to reorganize certain rules so key topics are easier to find, add more clarity or specificity to certain rules that are vague, and update references throughout the chapter.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §553.43, Disclosure of Facility Identification Number, duplicates information also located in proposed repealed §553.272, Advertisements, Solicitations, and Promotional Material, and proposed new §553.292, Advertisements, Solicitations, and Promotional Material. The proposed repeal of §553.261, Coordination of Care, will restructure each of this rule's subsections into a separate new section to make these key topics easier to find and eliminate Coordination of Care as a section name in the chapter. These topics include: §553.261(a), Medications; §553.261(b), Accident, Injury and Acute Illness; §553.261(c), Health Care Professional, §553.261(d), Activities Program; §553.261(e), Dietary Services; §553.261(f), Infection Prevention and Control; §553.261(g), Restraints and Seclusion; and §553.261(h) Wheelchair Self-Release Seat Belts.

The proposed repeals of §553.263, Health Maintenance Activities; §553.265, Resident Records and Retention; §553.267, Rights; §553.269, Access to Residents and Records by the State Long-Term Care Ombudsman Program; §553.271, Postings; §553.272, Advertisements, Solicitations, and Promotional Material; §553.273, Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities; and §553.275, Emergency Preparedness and Response, make these section numbers available to allow for the relocation of all subsections under §553.261, Coordination of Care, and maintain these key topics in their same general order and location in the chapter. The proposed repeal of §553.311, Physical Plant Requirements for Alzheimer's Units, relocates these rules to new proposed §553.250, Construction Requirements for a Certified Alzheimer's Assisted Living Facility.

Proposed amendments throughout the chapter update and correct citations and references and restructure sentences to use active voice.

Proposed new §553.261, Inappropriate Placement in a Type A or Type B Facility, relocates content from proposed amended §553.259, Admission Policies and Procedures. Proposed new §553.263, Resident Transfer and Discharge, creates a new section to relocate rules for residents' rights pertaining to being transferred or discharged from proposed repealed §553.267, Rights, so they are easier to find. Proposed new §553.265, Respite Admissions, contains new rules to provide more specific guidance concerning residents admitted for respite care.

Proposed new §553.267, Medications, relocates the rule from proposed repealed §553.261, Coordination of Care, and restructures the rules so they are easier to navigate. The proposed new rule also adds requirements for assisted living facilities to have written medication policies and procedures and a medication administration record for each resident who receives medication administration or supervision where staff must record all medication doses administered and missed. The rule proposed for repeal only requires staff to record missed doses. The requirement for monthly medication counseling for residents who self-administer medications is amended to require additional medication counseling whenever a resident has a significant change in condition that might affect the ability to self-administer medications. The option to include a medication take-back program is added to the requirement that drug disposal be carried out by a licensed pharmacist.

Proposed new §553.269, Accident, Injury, or Acute Illness, and new §553.271, Health Care Professional, relocates the rule from proposed repealed §553.261, Coordination of Care, and provides updated citations and references where needed.

Proposed new §553.273, Activities Program, relocates the rule from proposed repealed §553.261, Coordination of Care, and changes the requirement from offering residents an activity at least once a week to offering residents a daily activity.

Proposed new §553.275, Dietary Services, relocates the rule from proposed repealed §553.261, Coordination of Care, and relocates rules for food preparation and kitchen area from proposed amended sections in Subchapter D, Facility Construction, as the guidance is more relative to this section. It also adds a rule that staff who work with or handle unpackaged food must complete an accredited food handler training course, clarifies that the three daily meals must include all five basic food groups, and updates citations and references.

Proposed new §553.277, Infection Prevention and Control, relocates the rule from proposed repealed §553.261, Coordination of Care, adds a requirement that during a declared emergency residents must be permitted visits from their chosen essential caregivers, provides additional guidance for employee TB screening, and updates citations and references.

Proposed new §553.279, Restraints and Seclusion, relocates the rule from proposed repealed §553.261, Coordination of Care, and adds specific guidance pertaining to the use of bed rails.

Proposed new §553.281, Health Maintenance Activities, relocates the rule from proposed repealed §553.263, Health maintenance activities, updates citations and references, and relocates the rule relating to RN delegation to proposed new §553.283, RN Delegation of Care Tasks, to clarify that RN delegation is separate from health maintenance activities.

Proposed new §553.285, Resident Records and Retention, relocates the rule from proposed repealed §553.265, Resident Records and Retention, adds a requirement to retain resident records for five years after services end, and provides guidance pertaining to electronic records and destruction of records.

Proposed new §553.287, Rights, relocates the rule from proposed repealed §553.267, Rights; lists examples of interference, coercion, discrimination, and reprisal from which residents have the right to be free; and adds specificity and clarity to rules per-

taining to residents' rights to privacy and retaining personal property. The rule also relocates most residents' rights pertaining to being transferred or discharged into proposed new §553.263, Resident Transfer and Discharge.

Proposed new §553.289, Access to Residents and Records by the State Long-Term Care Ombudsman Program, and §553.291, Postings, relocate the rule from proposed repealed §553.261, Coordination of Care.

Proposed new §553.292, Advertisements, Solicitations, and Promotional Material, relocates the rule from proposed repealed §553.272, Advertisements, Solicitations, and Promotional Material.

Proposed new §553.293, Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities, and new §553.295, Emergency Preparedness and Response, relocate the rule from proposed repealed §553.261, Coordination of Care.

The proposed amendment to §553.3, Definitions, removes a provision from the definitions for "abuse," "exploitation," and "neglect," relating to a person under 18 years of age who is not an emancipated minor, to coincide with the proposed amendments to §553.9, General Characteristics of a Resident, and §553.259, Admission Policies and Procedures, that clarify a resident in an assisted living facility must be at least 18 years old or an emancipated minor. The proposed amendment also adds definitions for "activities of daily living," "assistive devices," "bedfast," "capacity," "durable medical equipment," "outside resources," "plan of removal," "resident evaluation," "significant change," and "skilled nursing." Definitions related to life safety code are relocated to proposed amended §553.101, Definitions, including "listed," "local code," and "NFPA 101." The proposed amendment deletes definitions not used in the chapter: "commingles," "flame spread," "personal care staff," "qualified medical personnel," "safety," and "short term-acute episode." The proposed amendment to §553.3 also makes changes to certain definitions to add more clarity or update a reference, including "attendant," "authorized electronic monitoring (AEM)," "behavioral emergency," "delegation," "health care professional," "health maintenance activity," "legally authorized representative," "license holder," "medication supervision or supervision," "personal care services," "restraints," "seclusion," and "stable and predictable."

The proposed amendment to §553.5, Types of Assisted Living Facilities, adds additional guidance related to the evacuation capability required of a resident in a Type A facility.

The proposed amendment to §553.7, Assisted Living Facility Services, updates citations and references and adds more clarity.

The proposed amendment to §553.9, General Characteristics of a Resident, adds the statement that a resident must be 18 years of age or older or an emancipated minor and updates guidance related to some general characteristics of a resident. Key updates to the list of general characteristics include a statement that a resident may have assistive devices and a list of examples of these and a statement that a resident may have a permanently placed percutaneous endoscopic gastrostomy tube, as well as specifying that this would require RN delegation or designation as a health maintenance activity.

The proposed amendment to §553.17, Criteria for Licensing, adds more specific guidance related to whether an assisted living facility that has multiple buildings requires licensing as a small or large facility or requires multiple licenses.

Proposed amendments to §553.17, Criteria for Licensing; §553.23, Initial License Application Procedures and Requirements; §553.325, Initial License for a Type A or Type B Facility for an Applicant in Good Standing; §553.27, Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders; §553.29, Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing; §553.31, Provisional License; §553.33, Renewal Procedures and Qualifications; §553.37, Relocation; §553.39, Increase in Capacity; §553.47, License Fees; §553.132, Space Planning and Utilization Requirements for an Existing Large Type A Assisted Living Facility; §553.142, Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility; §553.232, Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility; §553.242, Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility; and §553.331, Determinations and Actions (Investigation Findings), correct the hyphenation of a word.

Proposed amendments to §553.21, Time Periods for Processing All Types of License Applications; §553.23, Initial License Application Procedures and Requirements; §553.25, Initial License for a Type A or Type B Facility for an Applicant in Good Standing; §553.27, Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders; §553.29, Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing; §553.31, Provisional License; §553.33, Renewal Procedures and Qualifications; §553.37, Relocation; §553.39, Increase in Capacity; and §553.47, License Fees, are to update citations and references and add more clarity.

The proposed amendment to §553.101, Definitions, relocates definitions specific to facility construction from §553.3, Definitions, to §553.101.

The proposed amendment to §553.103, Site and Location for all Assisted Living Facilities, clarifies what constitutes an abrupt change in level.

The proposed amendment to §553.104, Safety Operations, details when an assisted living facility must maintain onsite documentation or written records and clarifies that an assisted living facility must not permit an accumulation of waste in attic spaces.

The proposed amendment to §553.107, Building Rehabilitation, removes the requirement for an assisted living facility to notify HHSC prior to the start of building rehabilitation.

Proposed amendments to §553.111, Construction Requirements for an Existing Small Type A Assisted Living Facility, and §553.112, Space Planning and Utilization Requirements for an Existing Small Type A Assisted Living Facility, relocate requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

Proposed amendments to §553.113, Means of Escape Requirements for an Existing Small Type A Assisted Living Facility, and §553.115, Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility, update citations and references and add more clarity.

The proposed amendment to §553.122, Space Planning and Utilization Requirements for an Existing Small Type B Assisted Liv-

ing Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

Proposed amendments to §553.125, Fire Protection Systems Requirements for an Existing Small Type B Assisted Living Facility, and §553.131, Construction Requirements for an Existing Large Type A Assisted Living Facility, update citations and references and add more clarity where required.

The proposed amendment to §553.132, Space Planning and Utilization Requirements for an Existing Large Type A Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.135, Fire Protection Systems Requirements for an Existing Large Type A Assisted Living Facility, corrects an error.

The proposed amendment to §553.142, Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility, §553.211, Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility, and §553.212, Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.215, Fire Protection Systems Requirements for a New Small Type A Assisted Living Facility, adds clarity to a requirement related to electronic supervision of a fire sprinkler system.

The proposed amendment to §553.222, Space Planning and Utilization Requirements for a New Small Type B Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.225, Fire Protection Systems Requirements for a New Small Type B Assisted Living Facility, adds clarity to a requirement related to electronic supervision of a fire sprinkler system.

The proposed amendment to §553.231, Construction Requirements for a New Large Type A Assisted Living Facility, adds clarity to a requirement related to electronic supervision of a fire sprinkler system.

The proposed amendment to §553.232, Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.235, Fire Protection Systems Requirements for a New Large Type A Assisted Living Facility, corrects references.

The proposed amendment to §553.241, Construction Requirements for a New Large Type B Assisted Living Facility, clarifies that a building being structurally sound is determined and enforced by local authorities.

The proposed amendment to §553.242, Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.245, Fire Protection Systems Requirements for a New Large Type B Assisted Living Facility, corrects an error.

The proposed amendment to §553.246, Hazardous Area Requirements for a New Large Type B Assisted Living Facility, corrects references.

The proposed amendment to §553.253, Employee Qualifications and Training, restructures manager and staff training requirements to add clarity. The amendment specifies that a facility must have dedicated staff on duty for each shift and must not share on-duty staff with another facility or provider type. It also adds details to the required posting of the facility's 24-hour staffing pattern, contains a statement that a facility must not use a companion care provider or solicit or involve family members to provide care to residents to mitigate staffing shortages, and adds infection prevention and control principles to the list of required training and continued education.

The proposed amendment to §553.255, All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder, corrects a reference.

The proposed amendment to §553.257, Personnel, updates citations and references.

The proposed amendment to §553.259, Admission Policies and Procedures, adds a statement that a facility must not admit a resident under the age of 18 years unless the person is an emancipated minor. The amendment adds a rule that an assisted living facility that allows pets must have a pet policy and specifies the information the policy must include. It also changes the term "resident assessment" to "resident evaluation" and states the resident evaluation must be done annually and upon a significant change in condition and updates references and citations. The amendment also relocates information to new §553.261, Inappropriate Placement in a Type A or Type B facilities.

Proposed amendments to §553.301, Staffing, §553.303, Staff Training, §553.307, Admission Procedures, Assessment, and Service Plan, and §553.309, Activities Program, restructure some rules and clarify certain guidance to make information easier to find and understand and update citations and references.

The proposed amendment to §553.327, Inspections, Investigations, and Other Visits, clarifies that HHSC "may" inspect an assisted living facility approximately once every two years after initial inspection, as Long-Term Care Regulation does not have sufficient survey operations staff to inspect facilities at that frequency at all times.

Proposed amendments to all sections in Subchapter H, Enforcement, reformat the rules from question-and-answer format to regular rule format, except for §553.751, Administrative Penalties. The proposed amendment to §553.751, Administrative Penalties, changes the term "opportunity to correct" to "right to correct" and updates citations.

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.

Throughout the proposal, there are non-substantive changes that add clarity, update definitions, and update language and terms to current usage. Monitoring compliance with the proposed rules will not require additional staff and no automation changes will be needed.

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 expand and repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. 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 are necessary to protect the health, safety, and welfare of the residents of Texas, and the rules do not impose a cost on regulated people.

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 increased clarity in the rules and guidance concerning staff training requirements, general characteristics of residents in assisted living facilities, and residents' rights.

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 Christi Carro, Program Specialist, Texas Health and Human Services Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to hhscltcrrules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (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 22R054" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §§553.3, 553.5, 553.7, 553.9

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.3. Definitions.

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

(1) Abuse--Has

[~~(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program, as further described by rule or policy; and~~]

[~~(B)~~)] [~~For a person other than one described in subparagraph (A) of this paragraph, the term has~~] the meaning in Texas Health and Safety Code §260A.001(1), which is:

(A) [~~(i)~~)] the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(B) [~~(ii)~~)] sexual abuse of a resident, including any 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), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code §247.032.

(3) Activities of daily living--Activities routinely performed in the normal course of a day, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, positioning, assisting with range of motion, and assistance with self-administered medications. The term does not include health maintenance activities and tasks performed under RN delegation, which must be assessed in accordance with applicable Texas Board of Nursing rules at Texas Administrative Code (TAC), Title 22, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Inde-

pendent Living Environments for Clients with Stable and Predictable Conditions).

(4) [~~(3)~~] Actual harm--A negative outcome that compromises a resident's physical, mental, or emotional well-being.

(5) [~~(4)~~] Advance directive--Has the meaning given in Texas Health and Safety Code §166.002.

(6) [~~(5)~~] Affiliate--With respect to:

(A) a corporation, each officer and director, each stockholder with a disclosable interest, and any subsidiary or parent company of the corporation;

(B) a limited liability company, each officer, member, manager, or parent company;

(C) an individual:

(i) the individual's spouse, if the individual is a sole proprietor;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer or director or a stockholder with a disclosable interest in the corporation;

(D) a partnership, each partner in the partnership, including general and limited partners (regardless of the percent of direct or indirect ownership or controlling authority) and any parent company of the partnership;

(E) a trust, each trustee of the trust; and

(F) a group of co-owners under any other business arrangement, each officer, director, or the equivalent under the specific business arrangement and any parent company of the business.

[~~(A) a partnership, each partner thereof;~~]

[~~(B) a corporation, each officer, director, principal stockholder, subsidiary, or person with a disclosable interest, as the term is defined in this section; and~~]

[~~(C) a natural person:~~]

[~~(i)~~ ~~said person's spouse;~~]

[~~(ii)~~ ~~each partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and~~]

[~~(iii)~~ ~~each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.~~]

(7) [~~(6)~~] Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(8) [~~(7)~~] Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC), or in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(9) [~~(8)~~] Alzheimer's facility--A Type B facility that is certified to provide specialized services to residents with Alzheimer's disease or a related condition.

(10) [~~(9)~~] Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(11) [~~(10)~~] Assisted Living Facility Memory Care Disclosure Statement form--The HHSC-prescribed form that a facility uses when the facility advertises, markets, or otherwise promotes that it provides memory care services to residents with Alzheimer's disease and related disorders.

(12) Assistive devices--Products or devices for residents that promote independence and increase quality of life, including devices that assist a resident to perform tasks or activities of daily living and devices that make ambulation and transfer easier and safer for the resident with or without assistance from staff.

(13) [~~(11)~~] Attendant--A facility employee who provides personal [~~direct~~] care to residents. Attendants are not precluded from performing other tasks as assigned to assist with services in the facility. [~~This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.~~]

(14) [~~(12)~~] Authorized electronic monitoring (AEM)--Placement [~~The placement of an electronic monitoring device in a resident's room~~] and use of an electronic monitoring [~~using the~~] device to make audio and video [~~tapes or~~] recordings after fulfilling requirements [~~making a request to the facility~~] to allow electronic monitoring.

(15) Bedfast--Refers to a resident who, because of an infirmity, requires a stretcher, bed or similar device for evacuation.

(16) [~~(13)~~] Behavioral emergency--Has the meaning given in §553.279 of this chapter (relating to Restraints and Seclusion) [~~§553.261(g)(2) of this chapter (relating to Coordination of Care)~~].

(17) Capacity--The number of residents for which a facility is licensed to provide services, regardless of census.

(18) [~~(14)~~] Certified ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(19) [~~(15)~~] CFR--Code of Federal Regulations.

(20) [~~(16)~~] Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

[~~(17) Commingles--The laundering of apparel or linens of two or more individuals together.~~]

(21) [~~(18)~~] Controlling person--[~~A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person. A controlling person includes:~~]

(A) A person is a controlling person if the person, acting alone or with others, can directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.

(B) For purposes of this chapter, "controlling person" includes:

(i) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(ii) a person who is a controlling person of a management company or other business entity that operates an assisted liv-

ing facility or that contracts with another person for the operation of an assisted living facility; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(C) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an assisted living facility or of a management company or other business entity described in subparagraph (B)(i) of this paragraph that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(D) A controlling person described by paragraph (B)(iii) of this definition does not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

~~[(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;]~~

~~[(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of an assisted living facility;]~~

~~[(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and]~~

~~[(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.]~~

(22) [~~(19)~~] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and about which the facility and HHSC have not been informed by the resident, by the person who placed the device in the room, or by a person who uses the device.

(23) [~~(20)~~] Delegation--In the assisted living facility context, written authorization by a registered nurse (RN) acting on behalf of the facility for an attendant [~~personal care staff~~] to perform a task [~~tasks~~] of nursing care in a selected situation, in which [~~situations, where~~] delegation criteria are met for the task, in accordance with Texas Board of Nursing rules at 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions). [~~The delegation process includes nursing assessment of a resident in a specific situation, evaluation of the ability of the personal care staff, teaching the task to the personal care staff, ensuring supervision of the personal care staff in performing a delegated task, and re-evaluating the task at regular intervals.~~]

(24) [~~(21)~~] Dietitian--A person who currently holds a license or provisional license issued by the Texas Department of Licensing and Regulation.

(25) [~~(22)~~] Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(26) [~~(23)~~] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(27) [~~(24)~~] Disclosure statement--An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the facility's preadmission, admission, and discharge processes [~~process~~]; resident evaluation [~~assessment~~] and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(28) Durable medical equipment--Items that are ordered by a health care provider for everyday or extended use during treatment and recovery from an injury or illness or due to age related problems.

(29) [~~(25)~~] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room and [,] designed to capture images and record [~~acquire~~] communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(30) [~~(26)~~] Exploitation--Has

~~[(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(3), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and]~~

[~~(B)~~] [~~For a person other than one described in subparagraph (A) of this paragraph, the term has~~] the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(31) [~~(27)~~] Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(32) [~~(28)~~] Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

~~[(29) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).]~~

(33) [~~(30)~~] Functional disability--A mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and personal care.

(34) [~~(31)~~] Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(35) [~~(32)~~] Health care professional--An individual who holds a current license or certification, [~~licensed, certified,~~] or is otherwise legally authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. [~~The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.~~]

(A) The term includes individuals such as physicians, registered nurses, licensed vocational nurses, licensed dietitians, physical therapists, and occupational therapists.

(B) A health care professional may be employed by the facility, be employed by or contracted with an outside entity such as a home and community support services agency, or be an independent contractor.

(36) [~~(33)~~] Health maintenance activity (HMA)--Consistent with the definition in the Texas Board of Nursing rules for RN Delegation at 22 TAC §225.4 (relating to Definitions), a task that:

(A) requires a higher level of skill to perform than activities of daily living; [~~may be exempt from delegation based on an RN's assessment in accordance with §553.263(c) of this chapter (relating to Health Maintenance Activities); and~~]

(B) is exempt from delegation based on an RN's assessment in accordance with Texas Board of Nursing rules at 22 TAC Chapter 225; and [~~requires a higher level of skill to perform than personal care services and, in the context of an ALF, excludes the following tasks:~~]

(C) in the context of an assisted living facility, excludes:

(i) intermittent catheterization; and

(ii) subcutaneous, nasal, or insulin pump administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus.

(37) [~~(34)~~] HHSC--The Texas Health and Human Services Commission.

(38) [~~(35)~~] Immediate threat to the health or safety of a resident--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(39) [~~(36)~~] Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. Staff [~~The staff~~] are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(40) [~~(37)~~] Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(41) [~~(38)~~] Isolated--A situation in which a very limited number of residents are affected [~~,~~] and a very limited number of staff are involved, or a [~~the~~] situation that has occurred only occasionally.

(42) [~~(39)~~] Key infectious agents--Bacteria, viruses, and other microorganisms that [~~which~~] cause the most common infections and infectious diseases in long-term care facilities, and that can be mitigated by establishing, implementing, maintaining, and enforcing proper infection, prevention, and control policies and procedures.

(43) [~~(40)~~] Large facility--A facility licensed for 17 or more residents.

(44) [~~(41)~~] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, which [~~and~~] may include a parent, guardian, spouse, sibling, [~~or managing conservator of a minor,~~] or a resident's legal [~~the~~] guardian or agent under a power of attorney [~~of an adult~~].

(45) [~~(42)~~] License holder--A person that holds a license to operate a facility.

[~~(43) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.~~]

[~~(44) Local code--A model building code adopted by the local building authority where the facility is constructed or located.~~]

(46) [~~(45)~~] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of the [~~a~~] facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(47) [~~(46)~~] Manager--The individual in charge of the day-to-day operation of the facility.

(48) [~~(47)~~] Managing local ombudsman--Has the meaning given in §88.2 of this title.

(49) [~~(48)~~] Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(50) [~~(49)~~] Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(51) [~~(50)~~] Medication assistance or supervision-- The assistance or supervision of the medication regimen by facility staff. Refer to §553.267(c) [~~§553.261(a)~~] of this chapter (relating to Rights).

(52) [~~(51)~~] Medication self-administration--A resident's self-administration of [~~(self- or self-administration of)--The capability of a resident to administer~~] the resident's own medication or treatments without assistance from the facility staff.

(53) [~~(52)~~] Memory care services--Services provided by an assisted living facility that include enhanced safety measures and that

are tailored to meet the needs of residents with a memory impairment or a diagnosis of dementia.

(54) [~~(53)~~] Multidrug-resistant organisms--Bacteria and other microorganisms that have developed resistance to multiple types of medicine used to act against the microorganism.

(55) [~~(54)~~] Neglect--Has

[~~(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(4), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and~~]

[~~(B)~~] [~~For a person other than one described in subparagraph (A) of this paragraph, the term has~~] the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

[~~(55) NFPA 101--The 2012 publication titled *NFPA 101 Life Safety Code* published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.~~]

(56) Ombudsman intern--Has the meaning given in §88.2 of this title.

(57) Ombudsman program--Has the meaning given in §88.2 of this title.

(58) Online portal--A secure portal provided on the HHSC website for licensure activities, including for an assisted living facility applicant to submit licensure applications and information.

(59) Outside resources--Services and support applicable to the needs of a resident that cannot be provided by the facility, or that the resident declines provision of by the facility, and that are necessary to allow the resident to maintain the highest practicable level of independence and quality of life. Outside service providers include:

(A) an employee of a home and community support services agency in accordance with Texas Health and Safety Code, Chapter 142;

(B) a health care professional, as defined in this section;

(C) mental health and cognitive service support; and

(D) companion services.

(60) [~~(59)~~] Pattern of violation--Repeated, but not pervasive [~~widespread in scope~~], failures of a facility to comply with this chapter or a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(61) [~~(60)~~] Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(62) [~~(61)~~] Personal care services--Assistance with activities of daily living, as defined in this section, and general supervision or oversight of the physical and mental well-being of residents in the facility [~~feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person~~].

[~~(62) Personal care staff--An attendant whose primary employment function is to provide personal care services.~~]

(63) Physician--A practitioner licensed by the Texas Medical Board.

(64) Plan of removal--A plan that identifies all actions an assisted living facility will take to immediately address noncompliance that has resulted in or caused serious injury, serious harm, serious impairment, or death by detailing how the facility will keep residents safe and free from serious harm or death caused by the noncompliance.

(65) [~~(64)~~] Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact on a resident.

(66) [~~(65)~~] Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or physician's [~~a physician~~] assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(67) [~~(66)~~] Private and unimpeded access--Access to enter a facility or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

[~~(67) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.~~]

(68) Rapid influenza diagnostic test--A test administered to a person with flu-like symptoms that can detect the influenza viral nucleoprotein antigen.

(69) Resident--An individual accepted for care in a facility.

(70) Resident evaluation--The assessment of a resident to determine the care required, in accordance with Texas Health and Safety Code §247.002.

(71) [~~(70)~~] Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(72) [~~(71)~~] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(73) [~~(72)~~] Restraints--

(A) Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and [~~are~~] not required to treat the resident's medical symptoms.

(B) Physical restraints are any manual method [~~,~~] or physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a resident to move his or her arms, legs, body, or head freely [~~attached or adjacent to the resident that restricts freedom of movement~~]. Physical restraints include restraint holds. This definition does not apply to wheelchairs, seating systems, or secondary supports when used to provide postural support, stability, pressure distribution, and pressure relief.

(74) [~~(73)~~] RN (registered nurse)--A person who holds a current and active license from the Texas Board of Nursing to practice professional nursing, as defined in Texas Occupations Code §301.002(2).

~~[(74) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.]~~

(75) Seclusion--The involuntary confinement of a resident alone in a room or area that the resident is physically prevented from leaving [~~separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.~~]

(76) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

~~[(77) Short-term acute episode--An illness of less than 30 days' duration.]~~

(77) Significant change--A sudden or major shift in the physical or behavioral status of a resident that is inconsistent with the resident's condition when admitted or last assessed, such as unplanned weight change, stroke, heart condition, hospice election, the development of a pressure sore, or the worsening of an existing pressure sore. Ordinary day-to-day fluctuations in a resident's functioning and behavior, short-term illnesses such as colds, or the gradual deterioration in a resident's ability to conduct activities of daily living that accompanies the aging process are not considered significant changes.

(78) Skilled nursing--Tasks that may only be provided by a licensed nurse and require clinical reasoning, nursing judgment, or critical decision making.

(79) [~~(78)~~] Small facility--A facility licensed for 16 or fewer residents.

(80) [~~(79)~~] Stable and predictable--A phrase describing the clinical and behavioral status of a resident that is non-fluctuating and consistent and does not require the regular presence of a registered or licensed vocational nurse.

~~[(A) The phrase does not include within its meaning a description of the clinical and behavioral status of a resident that is expected to change rapidly or needs continuous or continual nursing assessment and evaluation.]~~

~~[(B) The phrase does include within its meaning a description of the condition of a resident receiving hospice care within a facility where deterioration is predictable.]~~

(81) [~~(80)~~] Staff--Employees of an assisted living facility.

(82) [~~(81)~~] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(83) [~~(82)~~] State Ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(84) [~~(83)~~] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will likely result in death in six months or less.

(85) [~~(84)~~] Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(86) [~~(85)~~] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(87) [~~(86)~~] Widespread in scope--A violation of Texas Health and Safety Code, Chapter 247, or a rule, standard, or order adopted under Chapter 247 that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

(88) [~~(87)~~] Willfully interfere--To act or not act to intentionally prevent, interfere with, impede [~~impeded~~], or to attempt to intentionally prevent, interfere with, or impede.

(89) [~~(88)~~] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

§553.5. Types of Assisted Living Facilities.

(a) Basis for licensure type. A facility must be licensed as a Type A or Type B facility. A facility's licensure type is based on the capability of the residents to evacuate the facility, as described in this section.

(b) Type A. In a Type A facility, a resident:

(1) must be physically and mentally capable of evacuating the facility without physical assistance from staff, which may include an individual who is mobile, although non-ambulatory, such as an individual who uses a wheelchair or an electric cart, and has the capacity to transfer and evacuate himself or herself in an emergency;

(2) does not require routine attendance during nighttime sleeping hours;

(3) must be capable of following directions under emergency conditions; and

(4) must be able to demonstrate [~~to HHSC~~] that he or she [~~they~~] can travel from his or her own living unit to a centralized space, such as a lobby, living room, or dining room on the level of discharge, within a 13-minute period without continuous staff assistance and without using an elevator [~~meet the evacuation requirements described in Subchapter D of this chapter (relating to Facility Construction)~~].

(c) Type B. In a Type B facility, a resident may:

(1) require staff assistance to evacuate;

(2) require attendance during nighttime sleeping hours;

(3) be incapable of following directions under emergency conditions; and

(4) require assistance in transferring to and from a wheelchair; but

(5) must not be permanently bedfast.

(d) Type C.

(1) A Type C facility is a four-bed facility that was originally licensed by HHSC to provide adult foster care services as described in 40 Texas Administrative Code (TAC) [~~TAC~~] Chapter 48, Subchapter K (relating to Minimum Standards for Adult Foster Care).

(2) HHSC no longer issues Type C licenses and Type C licensure is no longer a requirement to contract with HHSC to provide adult foster care services. In accordance with 40 TAC Chapter 48, Subchapter K, in order to contract with HHSC as a provider of adult foster care services, an applicant must have a current license for a Type A or Type B assisted living facility.

§553.7. Assisted Living Facility Services.

(a) An assisted living facility is an entity that [~~must~~]:

(1) furnishes [~~furnish~~], in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor [~~of the establishment~~]; and

(2) provides [~~provide~~]:

(A) personal care services; or

(B) medication administration by a person licensed or otherwise authorized in this state to administer the medication.

(b) An assisted living facility [~~establishment~~] may provide:

(1) assistance with or supervision of medication administration;

(2) health maintenance activities in accordance with §553.281 [~~§553.263~~] of this chapter (relating to Health Maintenance Activities); and

(3) skilled nursing services for the following limited purposes:

(A) coordination of [~~coordinate~~] resident care with an outside home and community support services agency or other health care professional;

(B) provision or delegation of personal care services and medication administration, as described in this chapter;

(C) evaluation [~~assessment~~] of residents to determine the care required; and

(D) temporary delivery, for a period not to exceed 30 days, of [~~temporary~~] skilled nursing services for a minor illness, injury, or emergency.

(c) A facility may choose to provide services only to residents with specific healthcare conditions and diagnoses, such as brain injury, in accordance with this section and Texas Health and Safety Code, Chapter 247.

(d) As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided by the facility.

§553.9. General Characteristics of a Resident.

(a) A resident must be 18 years of age or older or an emancipated minor.

(b) [~~This section describes some general characteristics of a resident in a facility.~~] A resident may:

(1) exhibit symptoms of cognitive [~~mental~~] or emotional distress [~~disturbance~~], but must [~~is~~] not be considered at risk of imminent harm to self or others;

(2) require [~~need~~] assistance with activities of daily living as defined in §553.3 of this chapter (relating to Definitions) [~~movement~~];

(3) be incontinent without pressure sores [~~require assistance with bathing, dressing, and grooming~~];

(4) require toileting assistance, such as reminders to encourage routine toileting to prevent incontinence [~~require assistance with routine skin care, such as application of lotions or treatment of minor cuts and burns~~];

(5) have a variety of healthcare conditions and diagnoses that could require short-term or ongoing additional care, not provided by the facility, from outside resources, as defined in §553.3 of this chapter [~~need reminders to encourage toilet routine and prevent incontinence~~];

[~~(6) require temporary services by professional personnel;~~]

(6) [~~(7)~~] manage his or her own medication regimen and storage, or may require [~~need~~] assistance with a medication regimen [~~, supervision of self-medication~~], or may require medication administration or medication storage by facility staff;

(7) [~~(8)~~] require encouragement to participate in activities such as eating, hygiene, socializing, and attending appointments [~~eat, or monitoring due to social or psychological reasons of temporary illness~~];

(8) require monitoring due to social or psychological reasons of temporary illness, such as sadness, depression, or apathy;

(9) be hearing , [~~impaired or~~] speech, or vision impaired;

[~~(10) be incontinent without pressure sores;~~]

(10) [~~(11)~~] require an established therapeutic diet;

(11) [~~(12)~~] use various assistive [~~require self-help~~] devices, as defined in §553.3 of this chapter, that increase independence, such as a Geri chair, lap tray, lift chair, low vision aid, wheelchair, scooter, or walker; [~~and~~]

(12) [~~(13)~~] require [~~need~~] assistance with meals, which may include feeding; and[~~.~~]

(13) have a permanently placed percutaneous endoscopic gastrostomy (PEG) tube for feeding and medication administration, which requires RN delegation or RN designation as a health maintenance activity, as described in 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.

Filed with the Office of the Secretary of State on December 5, 2023.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 438-3161

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SUBCHAPTER B. LICENSING

26 TAC §§553.17, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 553.37, 553.39, 553.45, 553.47

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments and new section implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.17. Criteria for Licensing.

(a) A person must obtain a license issued by HHSC [~~be licensed~~] to establish or operate an assisted living facility in Texas.

(1) HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(2) The presence or absence of any one factor in paragraph (1) of this subsection does not determine whether one or more facilities are part of the same establishment or whether the facilities need to be licensed [~~is not conclusive~~].

(3) A facility's licensed capacity is based on the total capacity for residents within the entire assisted living establishment that is combined under a single license. If multiple licenses are obtained, the licensed capacity is determined per license.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that:

(1) the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section;[~~,~~] and[~~:~~]

(2) [~~(1)~~] the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority;

(C) meets HHSC licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an onsite [~~on-site~~] inspection by HHSC; and

(D) if located in a county of more than 3.3 million residents for initial license applications submitted or issued on or after December 6, 2022, is not located in a 100-year floodplain.[~~; and~~]

(3) [~~(2)~~] Operation [~~operation~~] of the facility must meet one of the following: [~~meets~~]

(A) HHSC licensing standards based on an onsite [~~on-site~~] health inspection by HHSC, which must include observation of the care of a resident; or

(B) [~~(3) the facility meets~~] the standards for accreditation based on an onsite [~~on-site~~] accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection (c)(3)(B) of this section [~~(c)(3) of this section~~] must contact HHSC to determine which accreditation commissions are available to meet HHSC licensure [~~the~~] requirements. [~~of that subsection.~~] If a license holder uses an onsite [~~on-site~~] accreditation survey by an accreditation commission, as provided in this section [~~subsection~~] and §553.33(h) [~~§553.33(i)~~] of this subchapter (relating to Renewal Procedures and Qualifications), the license holder must:

(1) provide written notification to HHSC by submitting an updated application in the licensing system within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission; and

(2) include a copy of the notice of change with its written notification to HHSC.

(e) HHSC issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) HHSC denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) HHSC may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person [~~required to be~~] disclosed on the application for licensure:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §553.751[~~(a)(2) - (9)~~] of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraph (1) or (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) engages in the following:

(A) knowingly submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees, as described in §553.47 of this subchapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code §247.021 by operating a facility without a license; [~~or~~]

(9) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter; or[.]

(10) chooses to surrender the license in lieu of enforcement action.

(i) Without limitation, HHSC reviews all information provided by an applicant, a license holder, a person required to be disclosed on the application for licensure, or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h) of this section. HHSC may grant a license if HHSC finds the applicant, license holder, person required to be disclosed on the application for licensure, affiliate, or manager is able to comply with the rules in this chapter.

(j) HHSC reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, HHSC examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

§553.21. Time Periods for Processing All Types of License Applications.

(a) HHSC reviews an application for a license within 30 days after the date HHSC Licensing and Credentialing Section, Long-term Care Regulation, receives the application and the associated payment of fees and notifies the applicant if additional information is needed to complete the application.

(b) HHSC denies an application that remains incomplete 120 days after the date that HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application and the associated payment of fees.

(c) HHSC issues a license within 30 days after HHSC determines that the applicant and the facility have met all licensure requirements referenced in §553.23 of this subchapter (relating to Initial License Application Procedures and Requirements) or §553.33 of this subchapter (relating to Renewal Procedures and Qualifications), as applicable.

(d) If HHSC does not process an application in the time period stated, the applicant has a right to make a request to the program director for reimbursement of the license fees paid with the application.

(1) If the program director does not agree that the established time period has been violated or finds that good cause existed for exceeding the established time period, the program director denies the request.

(2) Good cause for exceeding the established time period exists if:

(A) the number of applications to be processed exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;

(B) HHSC must rely on another public or private entity to process all or a part of the application received by HHSC, and the delay is caused by that entity; or

(C) other conditions existed giving good cause for exceeding the established time period.

(3) If the request for reimbursement is denied, the applicant may appeal to the HHSC Executive Commissioner for resolution of the dispute. The applicant must send a written statement to the HHSC Executive Commissioner describing the request for reimbursement and the reason for the request. The HHSC Executive Commissioner will make a timely decision concerning the appeal and notify the applicant in writing of the decision.

§553.23. Initial License Application Procedures and Requirements.

(a) An applicant must complete the HHSC pre-licensure training course before submitting an application for an initial license. An applicant that is currently licensed under Texas Health and Safety Code, Chapter 247, is exempt from this requirement.

(b) An applicant for an initial license must submit an application in accordance with §553.19 of this subchapter (relating to General Application Requirements) and include full payment of the fees required in §553.47 of this subchapter (relating to License Fees).

(c) HHSC reviews an application for an initial license within 30 days after the date HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application and associated fees

and notifies the applicant if additional information is needed to complete the application.

(d) The applicant must notify HHSC via the online portal indicating that the facility is ready for a life safety code [~~Life Safety Code~~] (LSC) inspection. The notice must be submitted with the application or within 120 days after the HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application and associated fees. After the applicant has satisfied the application submission requirements in §553.17 of this subchapter (relating to Criteria for Licensing) and §553.19 of this subchapter, HHSC staff conduct an onsite [~~on-site~~] LSC inspection of the facility to determine if the facility meets the applicable [~~NFPA 101 and other~~] physical plant requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the licensure requirements within 120 days after the initial LSC inspection, HHSC denies the application for a license.

(f) After a facility has met the licensure requirements in Subchapter D of this chapter and has admitted at least one but no more than three residents, the applicant must notify HHSC via the online portal that the facility is ready for a health inspection.

(1) HHSC staff conduct an onsite [~~on-site~~] health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(2) If the facility fails to meet the licensure requirements for standards of operation and resident care within 120 days after the initial health inspection, HHSC denies the application for a license.

(g) HHSC issues a license within 30 days after HHSC determines that the applicant and the facility have met the licensure requirements of this section. The issuance of a license constitutes HHSC's official written notice to the facility of the approval of the application.

(h) HHSC may deny an application for an initial license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §553.17 of this subchapter.

(i) If HHSC denies an application for an initial license, HHSC sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules at Texas Administrative Code, Title 1, Part 15, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

§553.25. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.

(a) An applicant may request that HHSC issue, before conducting an onsite [~~on-site~~] health inspection, an initial license for a Type A or Type B facility. The applicant must request the license by submitting a form prescribed by HHSC via the online portal.

(b) If an applicant makes a request in accordance with subsection (a) of this section, HHSC determines the applicant is in good standing, and the applicant complies with subsection (d) of this section, the applicant is not required to admit a resident to the facility or have the onsite [~~on-site~~] health inspection described in §553.23(f) of this subchapter (relating to Initial License Application Procedures and Requirements) before HHSC issues an initial license.

(c) For purposes of this section, an applicant is in good standing if:

(1) a condition in this paragraph [~~one of the following conditions~~] is met:

(A) the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; or

(B) the applicant has not held a license for a Type A or Type B facility, but a controlling person of the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; and

(2) each licensed facility operated by the applicant or the controlling person described in paragraph (1)(A) or (B) of this subsection:

(A) has not had a violation of a licensing rule:

(i) that:

(I) resulted in actual harm to a resident, which is defined as a negative outcome that compromises the resident's physical, mental, or emotional well-being; or

(II) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident; and

(ii) that:

(I) the facility did not challenge;

(II) was affirmed; or

(III) is pending a final determination; and

(B) has not had a sanction imposed by HHSC against the facility during the six years before the date an application is submitted that resulted in:

(i) a civil penalty;

(ii) an administrative penalty;

(iii) an injunction;

(iv) the denial, suspension, or revocation of a license; or

(v) an emergency closure.

(d) An applicant that makes a request in accordance with subsection (a) of this section must:

(1) submit to HHSC via the online portal:

(A) the applicant's policies and procedures;

(B) evidence that the applicant has complied with §553.257[~~(b)~~] of this chapter (relating to Personnel [~~Human Resources~~]); and

(C) documentation that the applicant's employees have the credentials described in §553.253 of this chapter (relating to Employee Qualifications and Training); and

(2) comply with §553.23(d) of this subchapter and §553.17 of this subchapter (relating to Criteria for Licensing).

(e) HHSC issues an initial license to an applicant that makes a request in accordance with subsection (a) of this section if HHSC determines that an applicant:

(1) is in good standing;

(2) has submitted information in accordance with subsection (d)(1) of this section that complies with this chapter; and

(3) is in compliance with applicable [~~NFPA 101 and other physical plant~~] requirements of Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a life safety code [~~Life Safety Code~~] (LSC) inspection within 120 days after the date HHSC staff conduct the initial LSC inspection.

(f) HHSC staff conduct an onsite [~~on-site~~] health inspection within 90 days after the date HHSC issues a license in accordance with subsection (e) of this section. The onsite [~~on-site~~] health inspection includes HHSC observation of the facility's provision of care to at least one resident.

(g) Until a facility that is issued an initial license under this section meets the requirements of the onsite [~~on-site~~] health inspection described in subsection (f) of this section, the facility must attach a written addendum to the disclosure statement required by §553.259(c)[~~(1)~~]of this chapter (relating to Admission Policies and Procedures) as notice to a resident or a prospective resident that the facility has not met the requirements of the onsite [~~on-site~~] health inspection. At a minimum, the addendum must state that:

(1) the facility has not met the requirements of an initial onsite [~~on-site~~] health inspection for a license; and

(2) HHSC staff conduct an onsite [~~on-site~~] health inspection for licensure within 90 days after the date the license is issued.

§553.27. Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders.

(a) A facility that advertises, markets, or otherwise promotes that the facility or a distinct unit of the facility provides specialized care for persons with Alzheimer's disease or related disorders must be certified or have the unit certified under subsection (d) of this section or §553.29 of this subchapter (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing). Certification under this section is not required for a facility to use advertising terms such as "medication reminders or assistance," "meal and activity reminders," "escort service," or "short-term memory loss, confusion, or forgetfulness."

(b) To be certified under subsection (d) of this section, a facility must be licensed as a Type B facility.

(c) A license holder must request certification of a facility or unit under subsection (d) of this section by submitting the forms prescribed by HHSC via the online portal and include full payment of applicable fees described in §553.47(c) of this subchapter (relating to License Fees).

(d) After HHSC receives a request for certification in accordance with subsection (c) of this section, HHSC certifies a licensed Type B facility as a certified Alzheimer's facility or a unit of a licensed Type B facility as a certified Alzheimer's unit, if HHSC determines:

(1) that the facility or unit is in compliance with §553.250 [~~§553.311~~] of this chapter (relating to Construction Requirements for a Certified Alzheimer's Assisted Living Facility [~~Physical Plant Requirements for Alzheimer's Units~~]) and other applicable requirements of Subchapter D of this chapter[~~(relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection~~] within 120 days after the date HHSC staff conduct an initial life safety code [~~LSC~~] inspection; and

(2) that the facility or unit meets the requirements of Subchapter F of this chapter (relating to Additional Licensing Standards for Certified Alzheimer's Assisted Living Facilities) based on an onsite [~~on-site~~] health inspection, during which HHSC observes the facility's or unit's provision of care to at least one resident who has been admitted to the Alzheimer's facility or unit.

(e) A facility or unit may not exceed the maximum number of residents specified on the Alzheimer's certificate issued to the facility by HHSC.

(f) A facility must post the facility's or unit's Alzheimer's certificate in a prominent location for public view.

(g) An Alzheimer's certificate is valid for three years from the effective date of approval by HHSC.

(h) HHSC cancels an Alzheimer's certificate if:

(1) a certified facility, or the facility in which a certified unit is located, undergoes a change of ownership; [~~or~~]

(2) HHSC determines that a certified facility or unit is not in compliance with applicable laws and rules; or[~~.~~]

(3) the legal entity or individual for which the certification is issued voluntarily closes the certification.

(i) A facility must remove a cancelled certificate from display and advertising and surrender the certificate to HHSC.

§553.29. Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing.

(a) An applicant may request that HHSC, before conducting an onsite [~~on-site~~] health inspection, issue an initial license for a Type B facility and an Alzheimer's certification for the facility or a distinct unit of the facility. The applicant must meet the requirements of §553.25 of this subchapter (relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing) for the initial license and the requirements of this section for certification of the facility or unit.

(b) An applicant must request certification by submitting forms prescribed by HHSC via the online portal and include full payment of applicable fees described in §553.47 of this subchapter (relating to License Fees).

(c) An applicant that makes a request in accordance with subsection (a) of this section is not required to admit a resident to the facility or unit or have the onsite [~~on-site~~] health inspection described in §553.23(f) of this subchapter (relating to Initial License Application Procedures and Requirements) before HHSC certifies the facility or unit if HHSC determines that the applicant is in good standing:

(1) for the issuance of an initial license of the facility in accordance with §553.25(c) of this subchapter; and

(2) for certification of the facility or unit in accordance with subsection (d) of this section.

(d) An applicant is in good standing to obtain certification of a facility or unit if:

(1) for at least six consecutive years before applying for certification:

(A) the applicant has been:

(i) the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(ii) a controlling person of the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(B) a controlling person of the applicant has been:

(i) the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(ii) a controlling person of the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit;

(2) each licensed facility operated by the applicant or the controlling person has not had a violation or sanction described in §553.25(c)(2) of this subchapter; and

(3) each licensed facility operated by the applicant or the controlling person has had no more than two violations listed in §553.287 [~~§553.267(a)~~] of this chapter (relating to Rights) during the six-year period immediately before the applicant applied for certification.

(e) For purposes of subsection (d)(3) of this section, a facility has a violation if:

(1) the applicant or controlling person operating the facility did not challenge the violation;

(2) a final determination on the violation is pending; or

(3) the violation was upheld.

(f) An applicant that makes a request in accordance with subsection (a) of this section must submit to HHSC for approval via the online portal:

(1) the applicant's policies and procedures required by Subchapter F of this chapter [~~(relating to Additional Licensing Standards for Certified Alzheimer's Assisted Living Facilities)~~]; and

(2) documentation demonstrating that the applicant is complying with Subchapter F of this chapter and §553.257[~~(b)~~] of this chapter [~~(relating to Human Resources~~]).

(g) HHSC certifies a facility or unit after an applicant makes a request in accordance with subsection (a) of this section if HHSC determines that the applicant:

(1) meets the good standing requirements described in §553.25(c) of this subchapter and subsection (d) of this section;

(2) has submitted information in accordance with subsection (f) of this section; and

(3) is in compliance with:

(A) §553.27 of this subchapter (relating to Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders); and

(B) §553.250 [~~§553.311~~] of this chapter (relating to Construction Requirements for a Certified Alzheimer's Assisted Living Facility [~~Physical Plant Requirements for Alzheimer's Units~~]).

(h) HHSC conducts an onsite [~~on-site~~] health inspection to determine if the facility or unit meets the requirements of Subchapter F of this chapter within 90 days after the date HHSC certifies a facility or unit in accordance with subsection (g) of this section. During each onsite [~~on-site~~] health inspection, HHSC observes the provision of care to at least one resident who has been admitted to the facility or unit.

(i) Until a facility or unit that is issued a certification under this section meets the requirements of the onsite [~~on-site~~] health inspection described in subsection (h) of this section, the facility must attach a written addendum to the disclosure statement required by §553.307(a) of this chapter (relating to Admission Procedures, Evaluation [~~Assessment~~], and Service Plan) to notify a resident or a prospective resident that the facility or unit has not met the requirements of the onsite [~~on-site~~] health inspection. At a minimum, the addendum must state that:

(1) the facility or unit has not met the requirements of an initial onsite [~~on-site~~] health inspection for Alzheimer's certification; and

(2) HHSC conducts an onsite [~~on-site~~] health inspection for Alzheimer's certification within 90 days after the date of certification.

(j) To obtain certification of a unit in a Type B facility that is already licensed, a license holder must comply with §553.27 of this subchapter.

§553.31. Provisional License.

~~[(a) HHSC may issue a six-month provisional license in the case of a corporate change of ownership.]~~

(a) [~~(b)~~] HHSC may issue [~~issues~~] a six-month provisional license for a newly constructed facility without conducting a life safety code [~~an NFPA 101 and physical plant~~] inspection to verify that the facility is in compliance with the applicable requirements of [~~under~~] Subchapter D of this chapter (relating to Facility Construction), [~~and, as applicable §553.311, of this chapter (relating to Physical Plant Requirements for Alzheimer's Units),~~] if:

(1) an applicant requests in writing a provisional license by submitting the appropriate application in the online portal;

(2) the applicant submits working drawings and specifications to HHSC for review in accordance with applicable procedures for plan review, approval, and construction in Subchapter D of this chapter, before facility construction begins;

(3) the applicant obtains all approvals, including a certificate of occupancy in a jurisdiction that requires one, from local authorities having jurisdiction in the area in which the facility is located, such as the fire marshal, health department, and building inspector;

(4) the applicant submits a complete license application within 30 days after receipt of all local approvals described in paragraph (3) of this subsection;

(5) the applicant pays in full the license fees required by §553.47 of this subchapter (relating to License Fees);

(6) the applicant, or a person who is a controlling person and an owner of the applicant, has constructed another facility in this state that complies with applicable [~~NFPA 101 and physical plant~~] requirements in Subchapter D of this chapter[~~, and, as applicable, §553.311 of this chapter~~]; and

(7) the applicant is in compliance with resident-care standards for licensure required by Subchapter E of this chapter (relating to Standards for Licensure) based on an onsite [~~on-site~~] inspection conducted in accordance with §553.327 of this chapter (relating to Inspections, Investigations, and Other Visits).

(b) [~~(c)~~] HHSC considers the date facility construction begins to be the date the building construction permit for the facility was approved by local authorities.

(c) [~~(d)~~] A provisional license expires on the earlier of:

(1) the 180th day after the effective date of the provisional license or the end of any extension period granted by HHSC; or

(2) the date a three-year license is issued to the provisional license holder.

(d) [~~(e)~~] HHSC conducts a life safety code [~~an NFPA 101 and physical plant~~] inspection of a facility as soon as reasonably possible after HHSC issues a provisional license to the facility.

(e) [~~(f)~~] After conducting a life safety code [~~an NFPA 101 and physical plant~~] inspection, HHSC issues a license in accordance

with Texas Health and Safety Code §247.023 to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license.

§553.33. Renewal Procedures and Qualifications.

(a) The facility is responsible for submitting an application for license renewal via the online portal before the expiration date printed on the license. A license issued under this chapter:

(1) expires three years after the date issued;

(2) must be renewed before the license expiration date; and

(3) is not automatically renewed.

(b) An application for renewal must comply with the requirements of §553.19 of this subchapter (relating to General Application Requirements), and, as applicable, §553.21 of this subchapter (relating to Time Periods for Processing All Types of License Applications). The submission of a license fee alone does not constitute an application for renewal.

(c) To renew a license, a license holder must submit an application for renewal with HHSC via the online portal before the expiration date of the license. For purposes of Texas Government Code §2001.054, HHSC considers a license holder to have submitted a timely and sufficient application for the renewal of a license, which continues the license in effect and permits the facility to continue operations while HHSC is processing the renewal application, if the license holder submits to HHSC the basic fee described in §553.47(a)(1) or (2) of this subchapter (relating to License Fees); and[~~:~~]

(1) a complete application for renewal no later than 45 days before the expiration of the current license;

(2) an incomplete application for renewal, with a letter explaining the circumstances that prevented the inclusion of the missing information no later than 45 days before the expiration of the current license; or

(3) a complete application or an incomplete application, with a letter explaining the circumstances that prevented the inclusion of the missing information, and the late fee described in §553.47(b) of this chapter during the 45-day period ending on the date the current license expires.

(d) HHSC may propose to deny, in accordance with subsection (m) of this section, a timely and sufficient, but incomplete, renewal application submitted in accordance with subsection (c) of this section if the license holder fails to complete the application by paying in full all fees due beyond the basic fee and late fee paid in accordance with §553.47(b) of this chapter, and by submitting all information and documentation required to complete the license holder's renewal application before the date that the current license expires. HHSC does not grant a license unless a renewal application is complete. It is the license holder's responsibility to ensure that the application is timely submitted to HHSC.

(e) A license expires if the license holder fails to submit a timely and sufficient application in accordance with subsection (c) of this section before the expiration date of the license.

(f) A person whose license has expired may not operate a facility without obtaining a license in accordance with the application requirements for an initial license in §553.23 of this subchapter (relating to Initial License Application Procedures and Requirements). Operating a facility without a license is subject to civil and administrative penalties and other authorized civil remedies.

(g) HHSC reviews an application for a renewal license within 30 days after the date HHSC Licensing and Credentialing Section, Long-term Care Regulation, receives the application and notifies the applicant if additional information is needed to complete the application.

~~[(h) A license holder applying for a renewal license must show that the facility meets HHSC licensing standards based on an on-site inspection by HHSC. The on-site inspection must include an observation of the care of a resident.]~~

(h) [~~(i)~~] If an applicant is relying on meeting standards for accreditation in accordance with §553.17(c)(3)(B) [~~§553.17(2)~~] of this subchapter (relating to Criteria for Licensing) to show that it meets the requirements for licensure, the application for a renewal license must include a copy of the license holder's accreditation report from the accreditation commission with its application for renewal.

(i) [~~(j)~~] HHSC may pend action on an application for the renewal of a license for up to six months if the facility does not meet licensure requirements during an onsite [~~on-site~~] inspection.

(j) [~~(k)~~] The issuance of a license constitutes official written notice from HHSC to the facility that its application is approved.

(k) [~~(l)~~] HHSC may deny an application for the renewal of a license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §553.17 of this subchapter.

(l) [~~(m)~~] Before denying an application for renewal of a license, HHSC gives the license holder:

(1) notice by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all requirements of law for the retention of the license.

(m) [~~(n)~~] To request an opportunity to show compliance, the license holder must send its written request to the Associate Commissioner of Long-term Care Regulation. The request must:

(1) be postmarked no later than 10 days after the date of HHSC notice and be received in the office of the Associate Commissioner of Long-term Care Regulation no later than 10 days after the date of the postmark; and

(2) contain specific documentation refuting HHSC allegations.

(n) [~~(o)~~] The opportunity to show compliance is limited to a review of documentation submitted by the license holder and information HHSC used as the basis for its proposed action and is not conducted as an adversary hearing. HHSC gives the license holder a written affirmation or reversal of the proposed action.

(o) [~~(p)~~] If HHSC denies an application for the renewal of a license, the applicant may request:

(1) an informal reconsideration by HHSC; and

(2) an administrative hearing or binding arbitration to appeal the denial, as described in §553.801 of this chapter (relating to Arbitration).

§553.37. Relocation.

(a) Relocation is the closing of a facility and the movement of its residents to another location for which the license holder does not hold a current license. This section does not apply to relocations conducted as part of a facility's emergency response activities under §553.295 of this chapter (relating to Emergency Preparedness and Response).

(b) A license holder must not relocate a facility without a license from HHSC for the facility at the new location.

(c) To apply for relocation, the license holder for the current location must submit an application via the online portal for an initial license for the new location in accordance with §553.23 of this subchapter (relating to Initial Application Procedures and Requirements) and full payment of the fees required in §553.47 of this subchapter (relating to License Fees). The applicant must enter the proposed date of relocation on the application, subject to issuance of a license.

(d) Residents must not be relocated until the new building has been inspected and approved as meeting the life safety code [~~Life Safety Code~~] licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) Following life safety code [~~Life Safety Code~~] approval by HHSC, the license holder must notify HHSC via the online portal of the date the residents will be relocated.

(f) After a facility has met standards of operations in subsection (d) of this section, HHSC staff conduct an onsite [~~on-site~~] health inspection if one was not conducted within the last survey [~~licensure~~] period, to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(g) HHSC issues a license for the new facility if the new facility meets the standards of operations in subsections (d) and (e) of this section.

(h) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the facility until HHSC has approved the relocation. The issuance of a license constitutes HHSC approval of the relocation. The license for the current location becomes invalid upon issuance of the new license for the new location. The license from the other location must be returned to HHSC.

§553.39. Increase in Capacity.

(a) A license holder must not increase a facility's licensed capacity without approval from HHSC.

(b) The license holder must submit an application for an increase in capacity in accordance with §553.19 of this subchapter (relating to General Application Requirements) and the fee required in §553.47 of this subchapter (relating to License Fees).

(c) The license holder must arrange for an inspection of the facility by the local fire marshal and provide the signed fire marshal approval to HHSC.

(d) After HHSC's review of an application and after the applicant notifies HHSC via the online portal that the facility is ready for a life safety code [~~Life Safety Code~~] (LSC) inspection, HHSC staff conduct an onsite [~~on-site~~] LSC inspection of the facility to determine if the facility meets the [~~LSC~~] licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the LSC licensure requirements within 120 days after the LSC inspection, HHSC denies the application for an increase in capacity.

(f) After a facility has met LSC licensure requirements, HHSC staff conduct an onsite [~~on-site~~] health inspection, if one was not conducted within the last survey [~~licensure~~] period, to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(g) HHSC issues a new license with an increased capacity within 30 days after HHSC determines that all licensure requirements have been met. HHSC may grant approval to occupy the increased capacity once HHSC determines that all licensure requirements have been met.

(h) In order to meet the residents' health and safety needs in the event of a fire, natural disaster, or catastrophic event, HHSC may grant approval to temporarily exceed a facility's licensed capacity provided the health and safety of residents are not compromised and the facility can meet the required health care service needs of all residents. A facility may exceed its licensed capacity under this circumstance, monitored by HHSC Survey Operations, until residents can be transferred to a permanent location. HHSC issues authorization for the temporary increase in the facility's licensed capacity. The authorization to temporarily increase the capacity ends when the facility receives written notice from HHSC ending the authorization.

§553.45. Voluntary Closure.

(a) A license holder that intends to voluntarily close an assisted living facility must send, at least 30 days before the facility closes, a written notice of the intent to close the facility, including the anticipated date of the closure, to HHSC Licensing, the facility's designated regional office, the State Ombudsman, and the residents of the facility and their legally authorized representatives.

(b) If, for reasons beyond the license holder's control, the license holder is not able to provide at least 30 days' notice in advance of the anticipated closure date, the license holder must, within two days before closing the facility;

(1) notify HHSC Licensing, the facility's designated regional office, and the State Ombudsman and the residents of the facility and their legally authorized representatives of the decision to close the facility; and

(2) provide the State Ombudsman with a list of residents who may need assistance to relocate.

(c) The facility must assist a resident to find placement at another facility upon request.

§553.47. License Fees.

(a) Basic fees.

(1) Type A and Type B. The license fee is $300, plus $15 for each bed for which a license is sought, with a maximum of $2,250 for a three-year license. The fee must be paid with an initial application, change of ownership application, or renewal application.

(2) Increase in capacity. An approved increase in capacity is subject to an additional fee of $15 for each bed. HHSC does not assess the fee for temporary capacity increases in response to an emergency.

(b) Late renewal fee. An applicant that submits an application for license renewal later than the 45th day before the expiration date of the license must pay a late fee of an amount equal to one-half of the basic fee required in accordance with subsection (a)(1) and (2) of this section.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification as an Alzheimer's facility under Subchapter E of this chapter (relating to Standards for Licensure) must pay an additional license fee. For a three-year license issued in accordance with subsection (a)(1) of this section or §553.33(a)(1) of this subchapter, the additional fee is $300.

(d) Trust fund fee.

(1) If the amount in the facility trust fund, established under Texas Health and Safety Code, Chapter 242, Subchapter D, and [~~Chapter 247~~] §247.003(b), is less than $500,000, HHSC collects an annual fee from each facility. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide not more than $500,000 in the trust fund. When the trust fund fee is collected, HHSC sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(2) HHSC may charge and collect a trust fund fee more than once a year if necessary to ensure that the amount in the facility trust fund is sufficient to make the disbursements required under Texas Health and Safety Code §242.0965. When this subsequent trust fund fee is collected, HHSC sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(3) Failure to pay the trust fund fee within 90 days after the date the fee is due as stated on the written notice described in paragraphs (1) and (2) of this subsection may result in an assessment of an administrative penalty under the administrative penalties described in §553.751 [~~Subchapter H, Division 9~~] of this chapter (relating to Administrative Penalties).

(e) Plan review fee. An applicant may submit building plans for a new building, an addition, the conversion of a building not licensed, or for the remodeling of an existing licensed facility for review by HHSC architectural staff. If the applicant chooses to submit building plans for review, the applicant must pay a fee for the plan review according to the following schedule:
Figure: 26 TAC §553.47(e) (No change.)

(f) Payment of fees. A facility or applicant must pay fees in a method allowable by [~~check, cashier's check, money order, or credit card, made payable to~~] HHSC. All fees are nonrefundable, except as provided in Texas Government Code, Chapter 2005, and in §553.21(d) of this chapter (relating to Time Periods for Processing All Types of License Applications).

(g) Optional expedited inspection and associated fee.

(1) An applicant for an assisted living facility license may obtain an expedited inspection described in subparagraph (A) or (B) of this paragraph if the applicant meets the requirements in both clauses of the applicable subparagraph.

(A) A life safety code [~~Life Safety Code~~] (LSC) inspection conducted no later than the 15th calendar day after the date HHSC receives a request for an expedited inspection, if the applicant:

(i) indicates that the facility is ready for a LSC inspection [~~meets the application requirements under this subchapter for the applicable license~~]; and

(ii) submits the applicable expedited LSC inspection fee in accordance with the fee schedule in paragraph (2) of this subsection; or

(B) an onsite [~~on-site~~] health inspection conducted no later than the 21st calendar day after the date HHSC receives a request for an expedited inspection, if the applicant[~~:~~]

(i) indicates that it is they are ready for a health inspection [~~meets the application requirements under this subchapter for the applicable license~~]; and

(ii) submits the applicable expedited onsite [~~on-site~~] health inspection fee in accordance with the fee schedule in paragraph (2) of this subsection.

(2) An applicant requesting an expedited inspection must include the applicable fee from the following fee schedule with a request for an expedited inspection submitted in accordance with paragraph (1) of this subsection.
Figure: 26 TAC §553.47(g)(2) (No change.)

(h) If, after HHSC conducts two LSC inspections for a given application, the applicant requests an additional inspection, then the applicant must pay a fee of $25 per bed, with a minimum payment of $1,000 for the third and each subsequent inspection pertaining to the same application.

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

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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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26 TAC §553.43

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeal implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.43. Disclosure of Facility Identification Number.

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 D. FACILITY CONSTRUCTION

DIVISION 1. GENERAL PROVISIONS

26 TAC §553.100, §553.101

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.100. General Requirements.

(a) A building or structure used as a licensed assisted living facility, whether new or existing, must comply with these standards.

(b) All assisted living facilities must comply with NFPA 101 [~~National Fire Protection Association Life Safety Code (NFPA 101)~~] and any applicable Tentative Interim Amendment (TIA) issued by NFPA, except as otherwise stated in these standards.

(c) All assisted living facilities must comply with other chapters, sections, subsections, and paragraphs of NFPA 101, as they relate to: Chapter 18, New Health Care Occupancies; Chapter 19, Existing Health Care Occupancies; Chapter 32, New Residential Board and Care Occupancies; and Chapter 33, Existing Residential Board and Care Occupancies, including:

(1) Chapter 1, Administration;

(2) Chapter 2, Referenced Publications;

(3) Chapter 3, Definitions;

(4) Chapter 4, General;

(5) Chapter 5, Performance-Based Option;

(6) Chapter 6, Classification of Occupancy and Hazard of Contents;

(7) Chapter 7, Means of Egress;

(8) Chapter 8, Features of Fire Protection;

(9) Chapter 9, Building Service and Fire Protection Equipment;

(10) Chapter 10, Interior Finish, Contents, and Furnishings;

(11) Chapter 11, Special Structures and High-Rise Buildings; and

(12) Chapter 43, Building Rehabilitation.

(d) An assisted living facility that wishes to be reclassified from a small facility to a large facility, from a Type A facility to a Type B facility, or both, must meet the requirements for a new facility of the type and size specified in this subchapter to be reclassified.

(e) The requirements of this subchapter apply to an assisted living facility as follows.[:]

(1) All assisted living facilities must comply with Division 1 of this subchapter (relating to General Provisions) and Division 2 of this subchapter (relating to Provisions Applicable to All Facilities).

(2) An assisted living facility initially licensed before August 31, 2021, and continually operated under an assisted living license without interruption since then, is considered an existing assisted living facility and must comply with the following, as applicable.[:]

(A) An existing small Type A assisted living facility must comply with Division 4 of this subchapter (relating to Existing Small Type A Assisted Living Facilities).

(B) An existing small Type B assisted living facility must comply with Division 5 of this subchapter (relating to Existing Small Type B Assisted Living Facilities).

(C) An existing large Type A assisted living facility must comply with Division 6 of this subchapter (relating to Existing Large Type A Assisted Living Facilities).

(D) An existing large Type B assisted living facility must comply with Division 7 of this subchapter (relating to Existing Large Type B Assisted Living Facilities).

(3) An assisted living facility initially licensed on or after August 31, 2021, or any new building or building addition to a currently licensed assisted living facility constructed on or after August 31, 2021, is considered a new assisted living facility and must comply with the following.[:]

(A) A new small Type A assisted living facility must comply with Division 8 of this subchapter (relating to New Small Type A Assisted Living Facilities).

(B) A new small Type B assisted living facility must comply with Division 9 of this subchapter (relating to New Small Type B Assisted Living Facilities).

(C) A new large Type A assisted living facility must comply with Division 10 of this subchapter (relating to New Large Type A Assisted Living Facilities).

(D) A new large Type B assisted living facility must comply with Division 11 of this subchapter (relating to New Large Type B Assisted Living Facilities).

(f) An assisted living facility must comply with local codes and ordinances as follows.[:]

(1) An assisted living facility located within the jurisdiction of a local organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure that adopts codes or ordinances governing building construction or fire safety (authority having jurisdiction [~~Authority Having Jurisdiction~~] or AHJ) must comply with applicable local codes and ordinances adopted by the AHJ, as interpreted and enforced by the AHJ. The description of the occupancy may vary with local codes.

(2) An assisted living facility located where there is no local AHJ must be designed and constructed to meet a nationally recognized [~~nationally-recognized~~] building code and its referenced codes.

(3) An existing building, either occupied as an assisted living facility at the time of initial inspection by HHSC or converted to occupancy as an assisted living facility prior to the initial inspection by HHSC, must meet all local requirements pertaining to that building for that occupancy as administered by the local AHJ for the adopted code or ordinance.

(4) An assisted living facility must submit documentation from the local AHJ that local requirements are satisfied.

(g) When local laws, codes, or ordinances are different from the standards for assisted living facilities set forth in this Subchapter

D, an assisted living facility must comply with both local and HHSC requirements.

(h) An assisted living facility must ensure building rehabilitation on existing buildings is classified according to NFPA 101 and that any rehabilitation complies with NFPA 101 and §553.107 of this subchapter (relating to Building Rehabilitation).

(i) An assisted living facility must ensure buildings, or portions of buildings, are not occupied during construction, repair, alterations, or additions, except when required means of egress, required means of escape, and required fire protection features are in place and continuously maintained for the portion occupied. Alternative life safety measures may be put in place if prior approval is obtained from HHSC.

(j) An assisted living facility must ensure no existing life safety feature is removed or reduced when the feature is a requirement for a new facility. Life safety features, and equipment not required by NFPA 101, that have been installed in existing buildings must continue to be maintained or be completely removed, if prior approval is obtained from HHSC.

(k) An assisted living facility must comply with the plan review and inspection requirements of the Texas Accessibility Standards (TAS) adopted by the Texas Department of Licensing and Regulation (TDLR) rules in Texas Administrative Code, Title 16, Chapter 68, and must provide documentation demonstrating it has registered the facility with TDLR and obtained a plan review from a Registered Accessibility Specialist, if TDLR requires the facility to be registered and reviewed.

(l) An assisted living facility must not segregate any area housing residents from other parts of the assisted living facility housing residents, except as permitted by §553.27 [~~§553.51~~] of this chapter (relating to Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders) and §553.29 of this chapter (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing).

§553.101. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise. The definitions in §553.3 of this chapter (relating to Definitions) also apply to this subchapter.

(1) Approved--Acceptable to the Texas Health and Human Services Commission.

(2) Authority having jurisdiction (AHJ)--An organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure.

(3) Auxiliary serving kitchen--An area that is not contiguous to a food preparation or serving area and that is for serving food but is not used for cooking or meal preparation.

(4) Bedroom usable floor space--The floor area of a resident bedroom that may be considered toward meeting minimum requirements for a resident bedroom floor area.

(5) Building rehabilitation--Any construction activity involving repair, modernization, reconfiguration, renovation, changes in occupancy or use, or installation of new fixed equipment, including:

(A) the replacement of finishes, such as new flooring or wall finishes or the painting of walls and ceilings;

(B) the construction, removal, or relocation of walls, partitions, floors, ceilings, doors, or windows;

(C) the replacement of doors, windows, or roofing;

(D) changes to the appearance of the exterior of a building, including new finish materials;

(E) the installation, repair, replacement, or extension of fire protection systems, including fire sprinkler systems, fire alarm system, and fire suppression systems, at cooking operations;

(F) the replacement of door hardware, plumbing fixtures, handrails in corridors, or grab rails in bathrooms and restrooms;

(G) the repair, replacement, or extension of required communication systems;

(H) the repair or replacement of emergency electrical system equipment and components, including generator sets, transfer switches, distribution panel boards, receptacles, switches, and light fixtures;

(I) the change of a wing or area to a certified [~~Certified~~] Alzheimer's assisted living facility [~~Disease Assisted Living Facility~~] or unit;

(J) the change of a certified [~~Certified~~] Alzheimer's assisted living facility [~~Disease Assisted Living Facility~~] or unit to ordinary resident use [~~resident use~~];

(K) a change in the use of space, including the change of resident bedrooms to other uses, such as offices, storage, or living or dining spaces; and

(L) changes in locking arrangements, such as the installation of access control systems or the installation or removal of electronic locking devices, including electromagnetic locks, and other delayed-egress locking devices.

(6) Co-mingles--The laundering of apparel or linens of two or more individuals together.

(7) Conversion--Change of occupancy from an existing residential or health care occupancy to a residential board and care occupancy, including an assisted living facility located in a building that had been used as a residence or a health care facility such as a hospital or a nursing home.

(8) Direct telephone--A telephone that automatically dials and connects to a fixed location when the caller takes the handset off-hook without requiring the caller to input a receiving telephone number. A direct telephone must ring at a location staffed 24-hours a day and may not be answered by an answering machine or voicemail system. A direct telephone may also function as a regular telephone when a receiving telephone number is entered.

(9) Factory Mutual (FM)--An organization that certifies products and services for compliance with loss prevention standards. Also known as FM Approvals.

(10) Finished ground level--The level of the finished ground (earth or other surface on ground).

(11) Fuel-fired heating device--Any equipment, device, or apparatus, or any part thereof, which is installed for the purpose of combustion of fuel, including natural gas, liquid petroleum gas (propane), or solid fuel, to produce heat or energy used as a component of a heating system providing heat for any interior space or water source. Freestanding solid fuel- or pellet-fuel burning appliances such as freestanding wood-burning or pellet-burning stoves do not meet this definition.

(12) Independent cooking equipment--An electric or gas stove or range with one or more burners, with or without an oven.

(13) Living unit--A portion of a facility arranged as a separate unit providing one or more bedrooms, toilet and bathing facilities, and living or dining spaces, with or without facilities for cooking, exclusively for the use of the residents residing in the bedrooms.

(14) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.

(15) Local code--A model building code adopted by the local building authority where the facility is constructed or located.

(16) [~~(14)~~] Neighborhood or household--A portion of a large facility arranged as a unit providing bedrooms, toilet and bathing facilities, resident living areas, and kitchen facilities serving up to 16 residents.

(17) [~~(15)~~] NFPA--National Fire Protection Association.

(18) [~~(16)~~] NFPA 10--Standard for Portable Fire Extinguishers, 2010 edition.

(19) [~~(17)~~] NFPA 13--Standard for the Installation of Sprinkler Systems, 2010 edition.

(20) [~~(18)~~] NFPA 13D--Standard for the Installation of Sprinkler Systems in One-and Two-Family Dwellings and Manufactured Homes, 2010 edition.

(21) [~~(19)~~] NFPA 13R--Standard for the Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height, 2010 edition.

(22) [~~(20)~~] NFPA 25--Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2011 edition.

(23) [~~(21)~~] NFPA 54--National Fuel Gas Code, 2012 edition.

(24) [~~(22)~~] NFPA 70--National Electrical Code, 2011 edition.

(25) [~~(23)~~] NFPA 72--National Fire Alarm and Signaling Code, 2010 edition.

(26) [~~(24)~~] NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2011 edition.

(27) NFPA 101--Life Safety Code, 2012 edition.

(28) [~~(25)~~] NFPA 110--Standard for Emergency and Standby Power Systems, 2010 edition.

(29) [~~(26)~~] NFPA 211--Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, 2010 edition.

(30) [~~(27)~~] NFPA 720--Standard for Installation of Carbon Monoxide (CO) Detection and Warning Equipment, 2012 edition.

(31) [~~(28)~~] Special Waste from Health Care-Related Facilities--Special waste from health care-related facilities as defined in Texas Administrative Code, Title 25, Part 1, Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(32) [~~(29)~~] TCEQ--Texas Commission on Environmental Quality.

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. PROVISIONS APPLICABLE TO ALL FACILITIES

26 TAC §553.103, §553.104

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.103. Site and Location for all Assisted Living Facilities.

(a) Firefighting unit. An assisted living facility must be served by a professional or volunteer firefighting unit and must have a water supply that meets the firefighting unit's requirements and approval.

(b) Correction of hazards. An assisted living facility must correct a site or building condition that HHSC staff identifies to be a fire, health, or physical hazard.

(c) Parking.

(1) An assisted living facility must provide or arrange for nearby parking spaces for the private vehicles of residents and visitors.

(2) An assisted living facility must provide a minimum of one parking space for every four residents in its licensed capacity, and for any fraction thereof, or per local requirements, whichever is more stringent.

(d) Ramps.

(1) An assisted living facility must ensure a ramp, walk, or step is of slip-resistive texture and is uniform, without irregularities.

(2) An assisted living facility must ensure a ramp does not exceed a slope of one foot in 12 feet.

(3) An assisted living facility must ensure any new ramp has a clear width of at least 36 inches. A new ramp is one that was installed or constructed on or after August 31, 2021.

(e) Site conditions. An assisted living facility must provide a guardrail, fence, or handrail where a grade:

(1) makes a [an abrupt] change in level of more than 30 inches vertically in less than 12 inches horizontally; or [.]

(2) has a slope of 45 degrees or more (12 inches of rise in 12 inches of run).

(f) Outside grounds. An assisted living facility must ensure that each outside area, grounds, and any adjacent buildings are maintained in good condition and kept free of rubbish, garbage, and untended growth that may constitute a fire or health hazard.

(g) Drainage. An assisted living facility must ensure site grades provide for water drainage away from structures to prevent ponding or standing water at or near a building, unless the ponding or standing water is part of an approved drainage system intended to hold water for a period of time.

(h) 100-year Floodplain. An assisted living facility located in a county of more than 3.3 million residents that applies for an initial license or is initially licensed on or after December 6, 2022, must not be located in a 100-year floodplain[, if the facility is located in a county of more than 3.3 million residents].

§553.104. Safety Operations.

(a) Local fire marshal inspection.

(1) An assisted living facility must obtain an inspection at least once every 12 months[,] by the local fire marshal, or the Texas State Fire Marshal's Office in locations where there is no local fire marshal, and must correct any items cited by the local fire marshal, or the Texas State Fire Marshal's Office, to the satisfaction of those authorities.

(2) An assisted living facility must maintain documentation at the facility reflecting the outcome of the most recent annual inspection.

(b) Emergency evacuation floor plan. An assisted living facility, other than a one-story small Type A or a one-story small Type B assisted living facility, must post an emergency evacuation floor plan in a location visible to residents.

(c) Fire safety plan. An assisted living facility must establish a fire safety plan for the protection of all persons in the facility in the event of fire.

(1) The [An] assisted living facility must ensure the fire safety plan is in effect at all times.

(2) The [An] assisted living facility must make written copies of the fire safety plan [are] available to all supervisory personnel.

(3) The [An] assisted living facility must ensure the fire safety plan addresses:

(A) evacuation to an area of refuge;

(B) evacuation from the building when necessary; and

(C) special staff actions, including fire protection procedures necessary to ensure the safety of any resident.

(4) If the facility is a large Type B assisted living facility the following provisions apply.[:]

(A) An existing large Type B assisted living facility must ensure the fire safety plan includes the provisions described in 19.7.2, Procedure in Case of Fire, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(B) A new large Type B assisted living facility must ensure the fire safety plan includes the provisions described in 18.7.2, Procedure in Case of Fire, in NFPA 101, Chapter 18, New Health Care Occupancies.

(5) The [An] assisted living facility must ensure the fire safety plan is reviewed at least annually and revised, as needed, to address the changing needs of residents. The facility must retain an onsite written record of the date and reason for a review or change to the fire safety plan.

(6) The [An] assisted living facility must instruct and inform all employees of their duties and responsibilities under the fire safety plan at least annually[,] and when the fire safety plan is revised. The facility must retain an onsite written record of when each employee was instructed of his or her duties and responsibilities under the fire safety plan.

(7) The [An] assisted living facility must keep a copy of the fire safety plan readily available at all times within the facility.

(8) The [An] assisted living facility must ensure the fire safety plan reflects the current evacuation capabilities of the residents.

(d) Fire drills. An assisted living facility must conduct at least one quarterly fire drill on each shift with at least one drill each month. Each drill must meet the following [these] requirements.[:]

(1) The [An] assisted living facility must ensure staff take part in fire drills according to the assisted living facility's fire safety plan.

(2) The [An] assisted living facility must inform residents of evacuation procedures and locations of exits.

(3) The [An] assisted living facility must document every fire drill using the most current version of the required Texas Health and Human Services (HHSC) form titled "Fire Drill Report" available on the HHSC website.

(4) If it is a [A] large Type B assisted living facility, the facility must activate the fire alarm signal during a fire drill conducted between 6:00 a.m. and 9:00 p.m.

(5) The [An] assisted living facility may announce a fire drill to residents in advance.

(e) Reporting fires.

(1) The [An] assisted living facility must immediately report a fire causing injury or death to a resident.

(2) An assisted living facility must report a fire causing damage to the facility or facility equipment to HHSC within 72 hours after the fire is extinguished.

(3) After making a report by telephone or email, an assisted living facility must file a written report using the most current version of the required HHSC form titled "Fire Report for Long Term Care Facilities" available on the HHSC website.

(f) Smoking policies. An assisted living facility must establish and enforce policies regarding smoking, even if the policy is that smoking will not be permitted. The policy must also address the use of e-cigarettes and vaping devices. If smoking will be permitted, the smoking policies must:

(1) designate smoking areas for residents and staff; and

(2) provide ashtrays of noncombustible material and safe design in smoking areas.

(g) Fire alarm system. An assisted living facility must establish a program to inspect, test, and maintain the fire alarm system according to the requirements of NFPA 72, and according to the require-

ments of NFPA 720 where carbon monoxide detection is provided, and must execute the program at least once every six months.

(1) An assisted living facility must contract with a company that holds an Alarm Certificate of Registration from the State Fire Marshal's Office to execute the program.

(2) An assisted living facility must ensure a company that performs a service under the contract required under paragraph (1) of this subsection completes, signs, and dates an inspection form substantially similar to [~~like~~] the inspection and testing form in NFPA 72 for a service provided under the contract.

(3) If a task required by NFPA 72 or NFPA 720 must occur at intervals other than during the contracted visits in this subsection, an assisted living facility must ensure the task is performed and documented by a knowledgeable individual.

(4) An assisted living facility must ensure:

(A) a fire alarm system component that requires visual inspection is visually inspected in accordance with NFPA 72;

(B) a fire alarm system component that requires testing is tested in accordance with NFPA 72; and

(C) a fire alarm system component that requires maintenance is maintained in accordance with NFPA 72.

(5) An assisted living facility that provides carbon monoxide detection must ensure:

(A) a carbon monoxide detection component that requires visual inspection is visually inspected in accordance with NFPA 720;

(B) a carbon monoxide detection component that requires testing is tested in accordance with NFPA 720;

(C) a carbon monoxide detection component that requires maintenance is maintained in accordance with NFPA 720; and

(D) a facility with a carbon monoxide detection component installed before August 31, 2021, must perform visual inspection, testing, and maintenance of that component beginning no later than August 31, 2022.

(6) A large assisted living facility containing smoke compartments must ensure each required smoke damper is inspected and tested in accordance with NFPA 101.

(7) An assisted living facility must ensure smoke detector sensitivity is checked within one year after installation and every two years thereafter in accordance with test methods in NFPA 72.

(8) An assisted living facility must maintain onsite documentation of compliance with the inspection, testing, and maintenance program to inspect, test, and maintain the fire alarm system described in this subsection and must maintain record copies of documents regarding the installation of a fire alarm system, including as-built installation drawings, operation and maintenance manuals, the installation certificate for the system, and written sequences for its operation.

(9) An assisted living facility must make documentation described in paragraph (8) of this subsection available to HHSC on request.

(h) Fire sprinkler system. An assisted living facility that is equipped with a fire sprinkler system, including a fire sprinkler system meeting NFPA 13D, must establish a program to inspect, test, and maintain the fire sprinkler system according to the requirements of NFPA 25, and must execute the program at least once every six months.

(1) An assisted living facility must contract with a company that holds an appropriate Sprinkler Certificate of Registration from the State Fire Marshal's Office to execute the program.

(2) An assisted living facility must ensure a company that performs a service under the contract required under paragraph (1) of this subsection completes, signs, and dates an inspection form like the inspection and testing form in NFPA 25 for a service provided under the contract.

(3) If a task required by NFPA 25 must occur at intervals other than during the contracted visits in this subsection, an assisted living facility must ensure the task is performed and documented by knowledgeable individuals.

(4) An assisted living facility must ensure that a sprinkler system component that requires visual inspection is visually inspected in accordance with NFPA 25.

(5) An assisted living facility must ensure that a sprinkler system component that requires testing is tested in accordance with NFPA 25.

(6) An assisted living facility must ensure that a sprinkler system component that requires maintenance is maintained in accordance with NFPA 25.

(7) An assisted living facility must ensure that an individual sprinkler head is inspected and maintained in accordance with NFPA 25.

(8) An assisted living facility must maintain onsite documentation of compliance with the inspection, testing, and maintenance program to inspect, test, and maintain the fire sprinkler system described in this subsection and must maintain record copies of documents regarding the installation of a fire sprinkler system, including as-built installation drawings, hydraulic calculations, proof of adequate fire sprinkler water supply, and installation certificates for the system.

(9) An assisted living facility must make documentation described in paragraph (8) of this subsection available to HHSC on request.

(i) Portable fire extinguishers.

(1) An assisted living facility must ensure staff are appropriately trained in the use of each type of extinguisher in the facility.

(2) An assisted living facility must inspect and maintain portable fire extinguishers; and[:]

(A) ensure that its staff perform regular monthly inspections or "quick checks" to ensure extinguishers are located in the designated place, extinguisher locations are not obstructed to access or visibility, and the pressure gauge reading or indicator on the extinguisher is in the operable range or position;

(B) ensure annual maintenance and inspection or "thorough checks" are performed according to NFPA 10 by an individual employed by a company holding an appropriate Extinguisher Certificate of Registration from the State Fire Marshal's Office to perform inspection, testing, and maintenance of portable fire extinguishers;

(C) maintain onsite[,] a record of all fire extinguisher inspections and maintenance performed; and

(D) replace unserviceable fire extinguishers.

(j) General facility condition and safety features.

(1) An assisted living facility must ensure staff utilize procedures to avoid cross-contamination between clean and soiled processes, including the handling of linens and cooking utensils.

(2) An assisted living facility must keep all buildings in good repair.

(A) An assisted living facility must maintain electrical, heating, and cooling systems so these systems operate in a safe manner. As evidence that these systems operate in a safe manner, HHSC may require the facility to submit a report prepared by [~~one of the following~~]:

(i) the fire marshal;

(ii) the city or county building official having jurisdiction over the location of the facility;

(iii) a licensed electrician; or

(iv) a registered professional engineer.

(B) An assisted living facility must ensure electrical appliances, devices, and lamps do not overload circuits or use extension cords of excessive length.

(3) An assisted living facility must keep all buildings free of accumulations of dirt, rubbish, dust, and hazards.

(4) An assisted living facility must maintain floors in good condition and clean floors regularly.

(5) An assisted living facility must [~~structurally~~] maintain walls and ceilings and must repair, repaint, or clean walls and ceilings whenever needed.

(6) An assisted living facility must keep storage areas and cellars organized and free from obstructions.

(7) An assisted living facility must not store any items or allow the accumulation of waste in attic spaces.

(8) An assisted living facility must ensure all equipment requiring periodic maintenance, testing, and servicing is accessible.

(A) An assisted living facility must ensure equipment that is necessary to conduct maintenance, testing, and services, including ladders, specific tools, and keys, is readily available to staff or maintenance personnel on site.

(B) An assisted living facility must provide access panels, at least 20 inches wide by 20 inches long, for building maintenance and must ensure access panels are located for reasonable access to equipment and fire or smoke barrier walls installed in the attic or other concealed spaces.

(k) Waste and storage containers.

(1) An assisted living facility must provide metal waste baskets of substantial gauge or any UL- or FM-approved container in each area where smoking is permitted, if applicable, in accordance with the facility's smoking policies required in subsection (f) of this section.

(2) An assisted living facility must provide one or more garbage, waste, or trash containers with close-fitting covers, made of metal or of any UL- or FM-approved material, for use in:

(A) kitchens;[,]

(B) janitor closets;[,]

(C) laundry rooms;[,]

(D) mechanical rooms; [~~or~~]

(E) boiler rooms; and[,]

(F) rooms used for [~~general~~] storage [~~rooms, and similar places~~].

(3) A facility may use disposable plastic liners in the containers for sanitation.

(4) [~~(3)~~] An assisted living facility must ensure waste, including waste classified as Special Waste from Health Care-Related Facilities, trash, and garbage are disposed of from the premises at regular intervals according to state and local requirements. The facility may not permit or allow an accumulation of waste on the facility premises, either inside or outside of facility buildings.

(l) Pest control.

(1) An assisted living facility must have an ongoing and effective pest control program executed by facility staff or by contract with a licensed pest control company.

(2) An assisted living facility must ensure the chemicals used to control pests are the least toxic and least flammable chemicals that are effective.

(3) An assisted living facility must ensure each operable window is provided with an insect screen.

(m) Flammable or combustible liquids. An assisted living facility must not store flammable or combustible liquids, such as gasoline, oil-based paint, charcoal lighter fluid, or similar products, in a building that houses residents.

(n) Storage of oxygen. An assisted living facility must ensure sanitary use and storage of oxygen for the safety of all residents.

(1) An assisted living facility must ensure oxygen cylinders in the possession and under the control of the facility are:

(A) identified by attached labels or stencils naming the contents;

(B) not stored with flammable or combustible materials;

(C) protected from abnormal mechanical shock that [, ~~which~~] is liable to damage the cylinder, valve, or safety device;

(D) protected from tamper by unauthorized individuals;

(E) if not supported in a proper cart or stand, properly chained or supported;

(F) stored so the cylinders can be used in the order received from the supplier;

(G) if empty and full cylinders are stored in the same enclosure or room, stored so that empty cylinders are separated from full cylinders; and

(H) if empty, marked to avoid confusion and delay if a full cylinder is needed in a rapid manner.

(2) An assisted living facility must adopt, implement, and enforce procedures for resident use, storage, and handling of oxygen cylinders and liquid oxygen containers in the possession and under the control of residents[,] to ensure the safety of all residents.

(o) Gas pressure test.

(1) An assisted living facility must obtain an initial pressure test of facility gas lines from the gas meter or propane storage tank to all gas-fired appliances and equipment.

(2) An assisted living facility must obtain an additional gas pressure test when the facility performs major renovations or additions to the gas piping or gas-fired equipment that interrupt gas service or replace gas-fired equipment.

(p) Annual gas heating check.

(1) An assisted living facility must ensure all gas heating systems are checked at least once per year, prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect the equipment.

(2) An assisted living facility must maintain records [~~of the testing~~] of the annual gas heating check [~~gas heating system~~].

(3) An assisted living facility must correct [~~unsatisfactory~~] conditions that prevent gas heating equipment from operating safely and ensure gas heating equipment will operate as intended.

(q) Emergency generator. A large assisted living facility that uses an emergency generator to provide power to emergency lighting systems must ensure the generator is tested and maintained according to Chapter 8, Routine Maintenance and Operational Testing, in NFPA 110. Routine maintenance and operational testing required by NFPA 110 includes the following procedures:

(1) a readily available record of inspections, test, exercising, operation, and repairs;

(2) monthly testing of cranking batteries;

(3) weekly inspection of the generator set and other components that make up the emergency power system;

(4) monthly exercise of the generator under load;

(5) monthly test of transfer switches; and

(6) a continuous operational test for at least 1-1/2 hours every three years.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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DIVISION 3. BUILDING REHABILITATION

26 TAC §553.107

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.107. Building Rehabilitation.

[~~(a) Prior to the start of building rehabilitation, other than that classified as repair in subsection (b) of this section, a facility must notify the Texas Health and Human Services commission (HHSC) in Austin, Texas, in writing.~~]

(a) [~~(b)~~] Upon completion of building rehabilitation, other than that classified as repair or renovation in this section, a final construction inspection of the facility must be performed by HHSC prior to occupancy. The facility is responsible for being aware of requirements for approval of the completed construction by [~~must have the written approval of~~] the local authority having jurisdiction, including the fire marshal and building official. When construction or building rehabilitation does not alter the licensed capacity of a facility, based on submitted documentation and the scope of the performed building rehabilitation, HHSC may permit a facility to use the rehabilitated portion of a facility pending a final construction inspection or may determine a final construction inspection is not required.

(b) [~~(c)~~] An assisted living facility undergoing any building rehabilitation must meet the requirements of this section.

(1) An assisted living facility must ensure the patching, restoration, or painting of materials, elements, equipment, or fixtures for maintaining such materials, elements, equipment, or fixtures in good or sound condition is classified as repair and must ensure the repair:

(A) meets the applicable requirements of §553.100(e) of this subchapter (relating to General Requirements);

(B) uses like materials, unless such materials are prohibited by NFPA 101, as modified by this subchapter; and

(C) does not make a building less conforming with NFPA 101, as modified by this subchapter, with the applicable sections of this subchapter, or with any alternative arrangements previously approved by HHSC, than it was before the repair was undertaken.

(2) An assisted living facility must ensure the replacement in kind, strengthening, or upgrading of building elements, materials, equipment, or fixtures that does not result in a reconfiguration of the building spaces within is classified as renovation and must ensure:

(A) any new work that is part of a renovation meets the applicable requirements of §553.100(e) of this subchapter;

(B) any new interior or exterior finishes meet the applicable requirements of §553.100(e)(3) of this subchapter; and

(C) does not make a building less conforming with NFPA 101, as modified by this subchapter, with the applicable sections of this subchapter, or with any alternative arrangements previously approved by HHSC, than it was before the renovation was undertaken.

(3) An assisted living facility must ensure the reconfiguration of any space; addition, relocation, or elimination of any door or window; addition or elimination of load-bearing elements; reconfiguration or extension of any system; installation of any additional equipment; or changes in locking arrangements as defined in §553.101(5)(L) [~~§553.101(6)(L)~~] of this subchapter (relating to Definitions), is classified as modification and must ensure:

(A) a newly constructed element, component, or system meets the applicable requirements of §553.100(e)(3) of this subchapter;

(B) all other work in a modification meets, at a minimum, the requirements for a renovation according to paragraph (2) of this subsection; and

(C) where the total rehabilitation work area classified as modification exceeds 50 percent of the total building area, the work is classified as reconstruction subject to paragraph (4) of this subsection.

(4) An assisted living facility must ensure the reconfiguration of a space that affects an exit or a corridor shared by more than one occupant space, or the reconfiguration of a space such that the rehabilitation work area is not permitted to be occupied because existing means of egress or fire protection systems are not in place or continuously maintained, is classified as reconstruction and must ensure:

(A) reconstruction of components of the means of egress meets the applicable requirements of §553.100(e) of this subchapter, except for the following components, which must meet the specific requirements of §553.100(e)(3) of this subchapter:

(i) illumination of means of egress;

(ii) emergency lighting of means of egress; and

(iii) marking of means of egress, including exit signs;

(B) if the total rehabilitation work area classified as reconstruction on any one floor exceeds 50 percent of the total area of the floor, all means of egress components identified in paragraph (4)(A)(i) - (iii) of this subsection and located on that floor meet the specific requirements of §553.100(e)(3) of this subchapter;

(C) if the total rehabilitation work area classified as reconstruction exceeds 50 percent of the total building area, all means of egress components identified in paragraph (4)(A)(i) - (iii) of this subsection and located in the building meet the specific requirements of §553.100(e)(3) of this subchapter; and

(D) all other work classified as reconstruction meets, at a minimum, the requirements for modification according to paragraph (3) of this subsection and renovation according to paragraph (2) of this subsection.

(5) An assisted living facility must ensure a change in the purpose or level of activity within a facility that involves a change in application of the requirements of this subchapter, including a change of a wing or area to a certified [~~Certified~~] Alzheimer's assisted living facility [~~Disease Assisted Living Facility~~] or unit, or a change of a certified [~~Certified~~] Alzheimer's assisted living facility [~~Disease Assisted Living Facility~~] or unit to ordinary resident-use, is classified as a change of use and meets the specific requirements of §553.100(e)(3) of this subchapter.

(6) An assisted living facility must ensure a change in the use of a structure or portion of a structure is classified as a change of occupancy and meets the specific requirements of §553.100(e)(3) of this subchapter.

(7) An assisted living facility must ensure an increase in the building area, aggregate floor area, building height, or number of stories of a structure is classified as an addition and meets the specific requirements of §553.100(e)(3) of this subchapter.

(c) [~~(d)~~] An assisted living facility undergoing rehabilitation must comply with the requirements of NFPA 101, as modified by this subchapter in accordance with the requirements of NFPA 101, Chapter 43, Building Rehabilitation.

(d) [~~(e)~~] An assisted living facility undergoing rehabilitation to an occupied building that involves means of escape, exit-ways, or exit doors must be accomplished without compromising the means of escape, means of egress, or exits or creating a dead-end situation at any time. HHSC may approve temporary exits or the facility must relocate residents until construction blocking the exit is completed. The facility must maintain other basic safety features, including fire alarm systems and fire sprinkler systems, in compliance with their relevant standards and must maintain required emergency power at all times during construction.

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 4. EXISTING SMALL TYPE A ASSISTED LIVING FACILITIES

26 TAC §§553.111 - 553.113, 553.115

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.111. Construction Requirements for an Existing Small Type A Assisted Living Facility.

(a) Structurally sound. An existing small Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads in accordance with applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies. An existing small Type A assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards, unless otherwise permitted by paragraph (2) of this subsection.

(1) An existing small Type A assisted living facility must be separated from other assisted living facilities, hospitals, or nursing facilities. Beginning August 31, 2021, an existing small Type A assisted living facility must be separated from any new occupancy or new use subject to [~~the~~] Texas Health and Human Services Commission [~~commission~~] (HHSC) licensing.

(2) An existing small Type A assisted living facility is not required to be separated from another occupancy not subject to HHSC licensing standards if the two occupancies are so intermingled that construction of a fire barrier having a 2-hour fire resistance rating is impractical and the following conditions are met.

(A) The means of escape, construction, protection, and other safeguards for the entire building must comply with the NFPA 101 requirements for an existing small Type A assisted living facility.

(B) HHSC must be given unrestricted and unannounced access at any reasonable time to inspect the other occupancy type for compliance with the NFPA 101 requirements for an existing small Type A assisted living facility.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection, an existing small Type A assisted living facility must ensure all buildings used by residents are sheathed with materials providing a fire resistance rating and ensure:

(A) interior wall and ceiling surfaces have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes; and

(B) columns, beams, girders, or trusses that are not enclosed within walls or ceilings are encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for the minimum sheathing requirements under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 19.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 19, Existing Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. An existing small Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 33.2.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(e) Vertical openings. An existing small Type A assisted living facility must ensure vertical openings are protected according to the requirements of 33.2.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

§553.112. Space Planning and Utilization Requirements for an Existing Small Type A Assisted Living Facility.

(a) Resident bedrooms.

(1) An existing small Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing small Type A assisted living facility must ensure bedroom-usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) An existing small Type A assisted living facility containing individual living units that include living space for the residents in addition to their bedrooms may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing small Type A assisted living facility may not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) An existing small Type A assisted living facility may house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing small Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by all residents occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service subject to approval by HHSC.

(5) An existing small Type A assisted living facility that is not equipped with a fire sprinkler system meeting the requirements of §553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility) must provide at least one window in each bedroom in the facility that, in addition to meeting the requirements of paragraphs (1) - (4) of this subsection, meets the following requirements:

(A) The bedroom window must meet the requirements of §553.113 of this division (relating to Means of Escape Requirements for an Existing Small Type A Assisted Living Facility) for use as a secondary means of escape from a resident sleeping room.

(B) The bedroom window must not be blocked by bars, shrubs, or any obstacle that could impede evacuation.

(C) The bedroom window must provide an operable section with a clear opening of not less than 5.7 square feet with a minimum width of 20 inches and a minimum height of 24 inches.

(6) An existing small Type A assisted living facility that is protected by an automatic sprinkler system meeting the requirements of §553.115 of this division must provide an operable window in a bedroom. The window opening size may be smaller than the minimum size listed in paragraph (5) of this subsection but must be operable according to the requirements of paragraph (2) of this subsection.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing small Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing small Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing small Type A assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing small Type A assisted living facility must provide a staff area on each floor of an existing small Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) An existing small Type A assisted living facility that is not more than two-stories in height and is composed of separate buildings grouped together and connected by covered walks[,] is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) An existing small Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing small Type A assisted living facility must ensure each resident bedroom is served by a separate, private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing small Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing small Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing small Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.117 of this division (relating to Mechanical Requirements for an Existing Small Type A Assisted Living Facility).

(g) Resident living areas.

(1) An existing small Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing small Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing small Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing small Type A assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) An existing small Type A assisted living facility must provide a dining area with appropriate furniture.

(A) An existing small Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing small Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing small Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing small Type A assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) An existing small Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) An existing small Type A assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing small Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing small Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing small Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) Kitchen.

[(1) An existing small Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]

[(2) An existing small Type A assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:]

[(A) is equipped to store, refrigerate, prepare, and serve food;]

[(B) is equipped to clean and sterilize;]

[(C) provides for refuse storage and removal; and]

[(D) meets the requirements of the local fire, building, and health codes.]

[(3)] An existing small Type A assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.116 of this division (relating to Hazardous Area Requirements for an Existing Small Type A Assisted Living Facility).

§553.113. Means of Escape Requirements for an Existing Small Type A Assisted Living Facility.

(a) The provisions of NFPA 101, Chapter 7, Means of Egress, do not apply to an existing small Type A assisted living facility unless explicitly referenced by this section or by NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(b) An existing small Type A assisted living facility must meet the requirements of 33.2.2, Means of Escape, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, except as described in this section.

(c) An existing small Type A assisted living facility must ensure doors meet the requirements of 33.2.2.5, Doors, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, and the additional requirements of this section.

(1) A resident room door in an existing small Type A assisted living facility not protected throughout by an approved automatic fire sprinkler system complying with the requirements of §553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility) must meet the requirements of this paragraph, as applicable [one of the following options]. A resident room door is not otherwise required to meet the requirements for doors in 33.2.3.6, Construction of Corridor Walls, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(A) The door must be a solid core wood door at least 1-3/4 inches thick or have a 20-minute opening protection rating and must latch in its frame to resist the passage of smoke; or

(B) The door must be self-closing or automatic-closing and must latch in its frame to resist the passage of smoke.

(2) A resident room door in an existing small Type A assisted living facility protected throughout by an approved automatic fire sprinkler system complying with the requirements of §553.115 of this division must latch in its frame to resist the passage of smoke.

(3) In an existing small Type A assisted living facility comprised of buildings that contain living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

(A) be self-closing or automatic-closing; and

(B) latch in its frame to resist the passage of smoke.

(4) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(d) An existing small Type A assisted living facility providing a bedroom window used as a secondary means of escape must ensure the window meets the requirements for a bedroom window used as a secondary means of escape in §553.112 of this division (relating to Space Planning and Utilization Requirements for an Existing Small Type A Assisted Living Facility).

(e) An existing small Type A assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs.

(1) An existing stair may be continued in service, subject to approval by HHSC.

(2) A stair used as means of escape must meet the requirements of 33.2.2.6, Stairs, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(3) Each stair must be arranged and located so that it is not necessary to go through another room, including a bedroom or bathroom, to reach the stair.

(4) Each stair must be provided with handrails.

(5) Each stair must be provided with normal lighting according to the requirements of §553.118 of this division (relating to Electrical Requirements for an Existing Small Type A Assisted Living Facility).

(6) A stair in an existing building that became an assisted living through conversion must meet the dimensional criteria for existing stairs in 7.2.2.2, Dimensional Criteria, in NFPA 101, Chapter 7, Means of Egress.

(7) An existing stair, previously approved by HHSC, may be rebuilt to the same dimensions but must meet all other requirements for stairs in NFPA 101.

§553.115. Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility.

(a) Fire alarm and smoke detection system. An existing small Type A assisted living facility must provide a manual fire alarm system meeting the requirements of section 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing small Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing small Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) An existing small Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing small Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in

NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) An existing small Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing small Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) An existing small Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing small Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system. In accordance with requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, an existing small Type A assisted living facility may provide:

[~~(1) An existing small Type A assisted living facility may provide one of the following fire sprinkler systems according to the requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.~~]

(1) [~~(A)~~] a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.2.3.5.3.3;

(2) [~~(B)~~] a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.2.3.5.3.4; or

(3) [~~(C)~~] a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13D in accordance with 33.2.3.5.3.2.

[~~(2) An existing small Type A assisted living facility must provide supervision of any fire sprinkler system where required by 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.~~]

(c) Protection of attics. An existing small Type A assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.2.3.5.7, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing small Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing small Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing small Type A assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing small Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(4) An existing small Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing small Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing small Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

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 5. EXISTING SMALL TYPE B ASSISTED LIVING FACILITIES

26 TAC §553.122, §553.125

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.122. Space Planning and Utilization Requirements for an Existing Small Type B Assisted Living Facility.

(a) Resident bedrooms.

(1) An existing small Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing small Type B assisted living facility must ensure bedroom-usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing small Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing small Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) An existing small Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing small Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by all residents occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing small Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must include closable door, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing small Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing small Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing small Type B assisted living facility must provide a staff area on each floor of an existing small Type B assisted living facility and in each separate building containing resident sleeping rooms. An existing small Type B assisted living facility must provide the following at each staff area:

(1) a desk or writing surface;

(2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.125 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing small Type B assisted living facility must ensure each resident bedroom is served by a separate, private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing small Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing small Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing small Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.127 of this division (relating to Mechanical Requirements for an Existing Small Type B Assisted Living Facility).

(g) Resident living areas.

(1) An existing small Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing small Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing small Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing small Type B assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) An existing small Type B assisted living facility must provide a dining area with appropriate furniture.

(A) An existing small Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of

the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing small Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing small Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing small Type B assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) An existing small Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) An existing small Type B assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing small Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing small Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing small Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) Kitchen.

[(1) An existing small Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]

[(2) An existing small Type B assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:]

[(A) is equipped to store, refrigerate, prepare, and serve food;]

[(B) is equipped to clean and sterilize;]

[(C) provides for refuse storage and removal; and]

[(D) meets the requirements of the local fire, building, and health codes.]

[(3)] An existing small Type B assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.126 of this division (relating to Hazardous Area Requirements for an Existing Small Type B Assisted Living Facility).]

§553.125. Fire Protection Systems Requirements for an Existing Small Type B Assisted Living Facility.

(a) Fire alarm and smoke detection system. An existing small Type B assisted living facility must provide a manual fire alarm system meeting the requirements of section 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing small Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing small Type B assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) An existing small Type B assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing small Type B assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) An existing small Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing small Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) An existing small Type B assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing small Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) In accordance with requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, an existing small Type B assisted living facility must provide: [~~An existing small Type B assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.~~]

(A) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.2.3.5.3.3;

(B) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.2.3.5.3.4; or

(C) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13D in accordance with 33.2.3.5.3.2.

(2) An existing small Type B assisted living facility must ensure a fire sprinkler system is supervised according to 9.7.2, Supervision, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(c) Protection of attics. An existing small Type B assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.2.3.5.7, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing small Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing small Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing small Type B assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing small Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10; or

(B) Other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(4) An existing small Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing small Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing small Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

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 6. EXISTING LARGE TYPE A ASSISTED LIVING FACILITIES

26 TAC §§553.131, 553.132, 553.135

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.131. Construction Requirements for an Existing Large Type A Assisted Living Facility.

(a) Structurally sound. An existing large Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads in accordance with applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies. An existing large Type A assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards, unless otherwise permitted by paragraphs (1) or (2) of this subsection.

(1) An existing large Type A assisted living facility must be separated from other assisted living facilities, hospitals or nursing facilities. Beginning August 31, 2021, an existing large Type A assisted

living facility must be separated from any new occupancy or new use subject to HHSC licensing.

(2) An existing large Type A assisted living facility is not required to be separated from another occupancy not subject to HHSC licensing standards if the two occupancies are so intermingled that construction of a fire barrier having a 2-hour fire resistance rating is impractical and the following conditions are met.

(A) The means of egress, construction, protection, and other safeguards for the entire building must comply with the NFPA 101 requirements for an existing large Type A assisted living facility.

(B) HHSC must be given unrestricted and unannounced access at any reasonable time to inspect the other occupancy type for compliance with the NFPA 101 requirements for an existing large Type A assisted living facility.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection, an existing large Type A assisted living facility must ensure all buildings used by residents are sheathed with materials providing the following fire resistance ratings.

(A) Interior wall and ceiling surfaces must have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes.

(B) Columns, beams, girders, or trusses that are not enclosed within walls or ceilings must be encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for this minimum sheathing requirement under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 19.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 19, Existing Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. An existing large Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 33.3.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(e) Vertical openings. An existing large Type A assisted living facility must ensure vertical openings are protected according to the requirements of 33.3.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

§553.132. Space Planning and Utilization Requirements for an Existing Large Type A Assisted Living Facility.

(a) Resident bedrooms.

(1) An existing large Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing large Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing large Type A assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing large Type A assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) An existing large Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing large Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space according to the requirements of subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service, subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing large Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing large Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing large Type A assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing large Type A assisted living facility must provide a staff area on each floor of an existing large Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) An existing large Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) An existing large Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.135 of this division (relating to Fire Protection Systems Requirements for an Existing Large Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing large Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing large Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing large Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing large Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.137 of this division (relating to Mechanical Requirements for an Existing Large Type A Assisted Living Facility).

(g) Resident living areas.

(1) An existing large Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing large Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing large Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing large Type A assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.
Figure: 26 TAC §553.132(g)(1)(C) (No change.)

(2) An existing large Type A assisted living facility must provide a dining area with appropriate furniture.

(A) An existing large Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing large Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing large Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing large Type A assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.
Figure: 26 TAC §553.132(g)(2)(D) (No change.)

(3) An existing large Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, an existing large Type A assisted living facility must deduct a pathway, equal to the minimum corridor width, according to §553.133 of this division (relating to Means of Egress Requirements for an Existing Large Type A Assisted Living Facility), from the measured area of the space.

(5) An existing large Type A assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing large Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing large Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing large Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) General kitchen.

[~~(1) An existing large Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.~~]

[~~(2) An existing large Type A assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.~~]

(1) [~~(3)~~] An existing large Type A assisted living facility that prepares food onsite [~~on-site~~] must provide a kitchen or dietary area that includes [~~to meet the general food service needs of the residents and must include~~] space for [~~the following~~]:

(A) storage, refrigeration, preparation, and serving food;

(B) dish and utensil cleaning, which includes:

(i) a three-compartment sink large enough to immerse pots and pans; and

(ii) a mechanical dishwasher for washing and sanitizing dishes;

(C) a food preparation sink;

(D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser and a waste receptacle;

(E) a handwashing lavatory that is readily accessible to every dish room area;

(F) refuse storage and removal;

(G) floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floor clean.[~~; and~~]

[~~(H) a grease trap, if required by local authorities.~~]

(2) [~~(4)~~] An existing large Type A assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.

(3) [~~(5)~~] An existing large Type A assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(4) [~~(6)~~] An existing large Type A assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

(5) [~~(7)~~] An existing large Type A assisted living facility must maintain a separation between soiled and clean dish areas.

(6) [~~(8)~~] An existing large Type A assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) An existing large Type A assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident-use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) An existing large Type A assisted living facility licensed before January 6, 2014, may provide a staff restroom that may be located outside the kitchen area.

(k) Kitchen janitorial facility.

(1) An existing large Type A assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area, except as described in paragraph (2) of this subsection.

(2) An existing large Type A assisted living facility licensed before January 6, 2014, must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) An existing large Type A assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(4) An existing large Type A assisted living facility must provide floor drains in the kitchen and dishwashing areas unless the facility was licensed before January 6, 2014, and the facility can keep the floors clean.

[~~(5) If required by local authorities, an existing large Type A assisted living facility must provide a grease trap.~~]

(l) Finishes.

(1) An existing large Type A assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls and ceilings.

(2) An existing large Type A assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) An existing large Type A assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors.

(1) An existing large Type A assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(2) Existing doors between kitchens and adjacent spaces that are not provided with vision panels may be continued in service, subject to approval by HHSC.

(n) Auxiliary serving kitchens.

(1) An existing large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) An existing large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) An existing large Type A assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) An existing large Type A assisted living facility must protect cooking facilities using commercial or residential cooking equipment for meal preparation as commercial cooking operations, according to the requirements for commercial cooking equipment in §553.136 of this division (relating to Hazardous Area Requirements for an Existing Large Type A Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.136 of this division:

(A) microwave ovens;

(B) hot plates; or

(C) toasters.

(p) Food storage areas.

(1) An existing large Type A assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) An existing large Type A assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving, so that food is not stored on the floor.

(A) An existing large Type A assisted living facility must ensure shelves are adjustable wire type shelving.

(B) An existing large Type A assisted living facility licensed before January 6, 2014, may use wood shelves provided the shelves are sealed and clean.

(3) An existing large Type A assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) An existing large Type A assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) An existing large Type A assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time, when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) An existing large Type A assisted living facility that co-mingles and processes laundry onsite [~~on-site~~] in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating, and this separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior that;

(I) must always operate when soiled linen is held in this area; and

(II) may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (1)(A) of this subsection; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) An existing large Type A assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) An existing large Type A assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.135. Fire Protection Systems Requirements for an Existing Large Type A Assisted Living Facility.

(a) Fire alarm and smoke detection system. An existing large Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing large Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing large Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) - (D) of this paragraph.

(B) An existing large Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing large Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements found in subparagraphs (A) and (B) of this paragraph.

(D) An existing large Type A assisted living facility comprised of buildings containing living units with independent cooking equipment must additionally have:

(i) a smoke detector installed in all [~~in~~] resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(3) Alarm control panel.

(A) An existing large Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing large Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) An existing large Type A assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) An existing large Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing large Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. An existing large Type A assisted living facility not equipped with a fire alarm system that automatically notifies emergency forces must immediately notify the fire department by telephone or other means.

(b) Fire sprinkler system.

(1) An existing large Type A assisted living facility may provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.3.3.5.1, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(2) An existing large Type A assisted living facility located in a building that is four or fewer stories in height may provide a fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.3.3.5.1.1, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(3) An existing large Type A assisted living facility located in a high-rise building must be protected throughout by an approved, supervised automatic fire sprinkler system meeting the requirements of NFPA 13 according to 33.3.3.5.3, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(c) Protection of attics. An existing large Type A assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.3.3.5.4, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing large Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing large Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing large Type A assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing large Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen and walk-in mechanical room.

(4) An existing large Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing large Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing large Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

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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DIVISION 7. EXISTING LARGE TYPE B ASSISTED LIVING FACILITIES

26 TAC §553.142

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.142. Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility.

(a) Resident bedrooms.

(1) An existing large Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing large Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing large Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing large Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) An existing large Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing large Type B assisted living facility must ensure each bedroom has at least one operable window, with outside exposure, that meets the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window that does not meet these requirements may be continued in service, subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing large Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing large Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing large Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing large Type B assisted living facility must provide a staff area on each floor of an existing large Type B assisted living facility and in each separate building containing resident sleeping rooms. An existing large Type B assisted living facility must provide the following at each staff area:

(1) a desk or writing surface;

(2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.145 of this division (relating to Fire Protection Systems Requirements for an Existing Large Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing large Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing large Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing large Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing large Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.147 of this division (relating to Mechanical Requirements for an Existing Large Type B Assisted Living Facility).

(g) Resident living areas.

(1) An existing large Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing large Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing large Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing large Type B assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller

than 120 square feet in area can be counted toward meeting this requirement.
Figure: 26 TAC §553.142(g)(1)(C) (No change.)

(2) An existing large Type B assisted living facility must provide a dining area with appropriate furniture.

(A) An existing large Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing large Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing large Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing large Type B assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.
Figure: 26 TAC §553.142(g)(2)(D) (No change.)

(3) An existing large Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, an existing large Type B assisted living facility must deduct a pathway, equal to the minimum corridor width, according to §553.143 of this division (relating to Means of Egress Requirements for an Existing Large Type B Assisted Living Facility), from the measured area of the space.

(5) An existing large Type B assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing large Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing large Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing large Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) General kitchen.

~~[(1) An existing large Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]~~

~~[(2) An existing large Type B assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.]~~

(1) [~~(3)~~] An existing large Type B assisted living facility that prepares food onsite [~~on-site~~] must provide a kitchen or dietary area that includes [~~to meet the general food service needs of the residents and must include~~] space for:

(A) storage, refrigeration, preparation, and serving of food;

(B) dish and utensil cleaning, which includes:

(i) a three compartment sink large enough to immerse pots and pans; and

(ii) a mechanical dishwasher for washing and sanitizing dishes;

(C) a food preparation sink;

(D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser, and a waste receptacle;

(E) a handwashing lavatory that is readily accessible to every dish room area;

(F) refuse storage and removal; and

(G) floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floor clean. [~~; and~~]

~~[(H) a grease trap, if required by local authorities.]~~

(2) [~~(4)~~] An existing large Type B assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit, measured throughout the room at five feet above the floor.

(3) [~~(5)~~] An existing large Type B assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(4) [~~(6)~~] An existing large Type B assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

(5) [~~(7)~~] An existing large Type B assisted living facility must maintain a separation between soiled and clean dish areas.

(6) [~~(8)~~] An existing large Type B assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) An existing large Type B assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraphs (2) and (3) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident-use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) An existing large Type B assisted living facility licensed before January 6, 2014, may provide a staff restroom located outside the kitchen area.

(3) An existing large Type B assisted living facility must ensure a kitchen serving a neighborhood or household provides a restroom accessible to kitchen staff that is in close proximity to the kitchen.

(k) Kitchen janitorial facility.

(1) An existing large Type B assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area, except as described in paragraphs (2) and (3) of this subsection.

(2) An existing large Type B assisted living facility licensed before January 6, 2014, must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) An existing large Type B assisted living facility must ensure a kitchen serving a neighborhood or household provides a janitorial facility exclusively for the kitchen that is close to the kitchen.

(4) An existing large Type B assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(5) An existing large Type B assisted living facility must provide floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floors clean.

[~~(6) If required by local authorities, an existing large Type B assisted living facility must provide a grease trap.~~]

(l) Finishes.

(1) An existing large Type B assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls, and ceilings.

(2) An existing large Type B assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) An existing large Type B assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors.

(1) An existing large Type B assisted living facility must ensure a door between a kitchen and a dining, serving, or resident-use area is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(2) Existing doors between kitchens and adjacent spaces that are not provided with vision panels may be continued in service subject to approval by HHSC.

(n) Auxiliary serving kitchens.

(1) An existing large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) An existing large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) An existing large Type B assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) An existing large Type B assisted living facility must protect cooking facilities according to the requirements in §553.146 of this division (relating to Hazardous Area Requirements for an Existing Large Type B Assisted Living Facility) except as provided for in paragraph (3) of this subsection.

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.146 of this division:

(A) microwave ovens;

(B) hot plates; or

(C) toasters.

(3) A facility providing a kitchen serving a neighborhood or household may continue to operate the kitchen without modification subject to approval by HHSC.

(p) Food storage areas.

(1) An existing large Type B assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) An existing large Type B assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving so that food is not stored on the floor.

(A) An existing large Type B assisted living facility must ensure shelves are adjustable wire type shelving.

(B) An existing large Type B assisted living facility licensed before January 6, 2014, may use wood shelves provided the shelves are sealed and clean.

(3) An existing large Type B assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) An existing large Type B assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) An existing large Type B assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) An existing large Type B assisted living facility that co-mingles and processes laundry onsite [~~on-site~~] in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating, which must extend from the floor to the floor or roof above:

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which;

(I) must always operate when soiled linen is held in this area; and

(II) may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section with;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by paragraph (1)(A) of this subsection; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) An existing large Type B assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) An existing large Type B assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

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 8. NEW SMALL TYPE A ASSISTED LIVING FACILITIES

26 TAC §§553.211, 553.212, 553.215

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.211. Construction Requirements for a New Small Type A Assisted Living Facility.

(a) Structurally sound. A new small Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads according to applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies. A new small Type A assisted living facility must be separated from other occupancies including other assisted living facilities, hospitals, or nursing facilities, by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection a new small Type A assisted living facility must ensure all buildings used by residents are sheathed with materials providing a fire resistance rating as follows.

(A) Interior wall and ceiling surfaces must have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes.

(B) Columns, beams, girders, or trusses that are not enclosed within walls or ceilings must be encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for the minimum sheathing requirements under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 18.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 18, New Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. A new small Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 32.2.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(e) Vertical openings. A new small Type A assisted living facility must ensure vertical openings are protected according to the requirements of 32.2.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

§553.212. Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility.

(a) Resident bedrooms.

(1) A new small Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new small Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission.

(3) A new small Type A assisted living facility containing individual living units that include living space for the residents in addition to their bedrooms may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new small Type A assisted living facility may not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) A new small Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new small Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by all residents occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space in subsection (a)(2) [~~(a)(3)~~] of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new small Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must include closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new small Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new small Type A assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new small Type A assisted living facility must provide a staff area on each floor of a new small Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) A new small Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) A new small Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.215 of this division (relating to Fire Protection Systems Requirements for a New Small Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new small Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new small Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new small Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new small Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.217 of this division (relating to Mechanical Requirements for a New Small Type A Assisted Living Facility).

(g) Resident living areas.

(1) A new small Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new small Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new small Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new small Type A assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the

facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) A new small Type A assisted living facility must provide a dining area with appropriate furniture.

(A) A new small Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new small Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new small Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new small Type A assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) A new small Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) A new small Type A assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new small Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new small Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new small Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) Kitchen.

~~[(1) A new small Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]~~

~~[(2) A new small Type A assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:]~~

~~[(A) is equipped to store, refrigerate, prepare and serve food;]~~

~~[(B) is equipped to clean and sterilize;]~~

~~[(C) provides for refuse storage and removal; and]~~

~~[(D) meets the requirements of the local fire, building, and health codes.]~~

[~~(3)~~] A new small Type A assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.216 of this division (relating to Hazardous Area Requirements for a New Small Type A Assisted Living Facility).

§553.215. Fire Protection Systems Requirements for a New Small Type A Assisted Living Facility.

(a) Fire alarm and smoke detection system. A new small Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new small Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new small Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) A new small Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new small Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 18.3.4.5.3, Nursing Homes, in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) A new small Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new small Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) A new small Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new small Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) In accordance with requirements in 32.2.3.5, Extinguishment Requirements in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, a new small Type A assisted living facility must provide: [~~A new small Type A assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 32.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.~~]

(A) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.2.3.5.3;

(B) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13R in accordance with 32.2.3.5.3.1; or

(C) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13D in accordance with 32.2.3.5.3.2.

(2) A new small Type A assisted living facility must ensure a fire sprinkler system is supervised according to 9.7.2, Supervision, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment [~~provide electrical supervision of any fire sprinkler system according to the requirements of 32.2.3.5.4, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies~~].

(c) Protection of attics. A new small Type A assisted living facility must ensure an attic is protected according to the requirements of 32.2.3.5.7, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(d) Portable fire extinguishers. A new small Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new small Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new small Type A assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new small Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(4) A new small Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new small Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new small Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

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 9. NEW SMALL TYPE B ASSISTED LIVING FACILITIES

26 TAC §553.222, §553.225

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.222. Space Planning and Utilization Requirements for a New Small Type B Assisted Living Facility.

(a) Resident bedrooms.

(1) A new small Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new small Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission.

(3) A new small Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new small Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) A new small Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new small Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) [~~(a)(3)~~] of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new small Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new small Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new small Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new small Type B assisted living facility must provide a staff area on each floor of a new small Type B assisted living facility and in each separate building containing resident sleeping rooms. A new small Type B assisted living facility must provide the following at each staff area:

(1) a desk or writing surface;

(2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.225 of this division (relating to Fire Protection Systems Requirements for a New Small Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new small Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new small Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new small Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new small Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.227 of this division (relating to Mechanical Requirements for a New Small Type B Assisted Living Facility).

(g) Resident living areas.

(1) A new small Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new small Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new small Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new small Type B assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) A new small Type B assisted living facility must provide a dining area with appropriate furniture.

(A) A new small Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new small Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new small Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new small Type B assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) A new small Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) A new small Type B assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new small Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new small Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new small Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) Kitchen.

[~~(1) A new small Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.~~]

[~~(2) A new small Type B assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:~~]

[~~(A) is equipped to store, refrigerate, prepare, and serve food;~~]

[~~(B) is equipped to clean and sterilize;~~]

[~~(C) provides for refuse storage and removal; and~~]

[~~(D) meets the requirements of the local fire, building, and health codes.~~]

[~~(3)~~] A new small Type B assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations, as required in §553.226 of this division (relating to Hazardous Area Requirements for a New Small Type B Assisted Living Facility).

§553.225. Fire Protection Systems Requirements for a New Small Type B Assisted Living Facility.

(a) Fire alarm and smoke detection system. A new small Type B assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new small Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new small Type B assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) A new small Type B assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new small Type B assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 18.3.4.5.3, Nursing Homes, in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) A new small Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new small Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) A new small Type B assisted living facility must ensure a fire alarm system is powered by a permanently wired [~~permanently-wired~~], dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new small Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) In accordance with 32.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, a new small Type B assisted living facility must provide: [~~A new small Type B assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 32.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.~~]

(A) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.2.3.5.3;

(B) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13R in accordance with 32.2.3.5.3.1; or

(C) a [~~A~~] fire sprinkler system meeting the requirements of NFPA 13D in accordance with 32.2.3.5.3.2.

(2) A new small Type B assisted living facility must ensure a fire sprinkler system is supervised according to 9.7.2, Supervision, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment. [~~provide electrical supervision of any fire sprinkler system according to the requirements of 32.2.3.5.4, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.~~]

(c) Protection of attics. A new small Type B assisted living facility must ensure an attic is protected according to the requirements of 32.2.3.5.7, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(d) Portable fire extinguishers. A new small Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new small Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new small Type B assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new small Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(4) A new small Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new small Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new small Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

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 10. NEW LARGE TYPE A ASSISTED LIVING FACILITIES

26 TAC §§553.231, 553.232, 553.235

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.231. Construction Requirements for a New Large Type A Assisted Living Facility.

(a) Structurally sound. A new large Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads according to applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies. A new large Type A assisted living facility must be separated from other occupancies, including other assisted living facilities, hospitals or nursing facilities, by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards.

(c) Construction type. A new large Type A assisted living facility must ensure a building housing the facility meets the requirements of 32.3.1.3, Minimum Construction Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(d) Interior finish. A new large Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 32.3.3.3, Interior Finish, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(e) Vertical openings. A new large Type A assisted living facility must ensure vertical openings are protected according to the requirements of 32.3.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

§553.232. Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility.

(a) Resident bedrooms.

(1) A new large Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new large Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted in paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) A new large Type A assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new large Type A assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) A new large Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new large Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space according to the requirements of subsection (a)(2) [~~(a)(3)~~] of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new large Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new large Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new large Type A assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new large Type A assisted living facility must provide a staff area on each floor of a new large Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) A new large Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) A new large Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.235 of this division (relating to Fire Protection Systems Requirements for a New Large Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new large Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new large Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new large Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new large Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.237 of this division (relating to Mechanical Requirements for a New Large Type A Assisted Living Facility).

(g) Resident living areas.

(1) A new large Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new large Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new large Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new large Type A assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.
Figure: 26 TAC §553.232(g)(1)(C) (No change.)

(2) A new large Type A assisted living facility must provide a dining area with appropriate furniture.

(A) A new large Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new large Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new large Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new large Type A assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.
Figure: 26 TAC §553.232(g)(2)(D) (No change.)

(3) A new large Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, a new large Type A assisted living facility must deduct a pathway, equal to the minimum corridor width according to §553.233 of this division (relating to Means of Egress Requirements for a New Large Type A Assisted Living Facility), from the measured area of the space.

(5) A new large Type A assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new large Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new large Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new large Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) General kitchen.

[~~(1) A new large Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.~~]

[~~(2) A new large Type A assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.~~]

(1) [~~(3)~~] A new large Type A assisted living facility that prepares food onsite [~~on-site~~] must provide a kitchen or dietary area that includes [~~to meet the general food service needs of the residents and must include~~] space for the following:

(A) storage, refrigeration, preparation, and serving food;

(B) dish and utensil cleaning which includes:

(i) a three-compartment sink large enough to immerse pots and pans; and

(ii) a mechanical dishwasher for washing and sanitizing dishes;

(C) a food preparation sink;

(D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser and a waste receptacle;

(E) a handwashing lavatory that is readily accessible to every dish room area; and

(F) refuse storage and removal; and

(G) floor drains in the kitchen and dishwashing areas, unless the facility was created through conversion and the facility can keep the floor clean. [~~; and~~]

[~~(H) a grease trap, if required by local authorities.~~]

(2) [~~(4)~~] A new large Type A assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.

(3) [~~(5)~~] A new large Type A assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(4) [~~(6)~~] A new large Type A assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

(5) [~~(7)~~] A new large Type A assisted living facility must maintain a separation between soiled and clean dish areas.

(6) [~~(8)~~] A new large Type A assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) A new large Type A assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) A new large Type A assisted living facility created through conversion may provide a staff restroom that may be located outside the kitchen area.

(k) Kitchen janitorial facility.

(1) A new large Type A assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area except as described in paragraph (2) of this subsection.

(2) A new large Type A assisted living facility created through conversion must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) A new large Type A assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(l) Finishes.

(1) A new large Type A assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls and ceilings.

(2) A new large Type A assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) A new large Type A assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors. A new large Type A assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(n) Auxiliary serving kitchens.

(1) A new large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) A new large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) A new large Type A assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) A new large Type A assisted living facility must protect cooking facilities according to the requirements in §553.236 of this division (relating to Hazardous Area Requirements for a New Large Type A Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.236 of this division:

(A) microwave ovens;

(B) hot plates; or

(C) toasters.

(p) Food storage areas.

(1) A new large Type A assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) A new large Type A assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving, so that food is not stored on the floor, and must ensure shelves are adjustable wire type shelving.

(3) A new large Type A assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) A new large Type A assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) A new large Type A assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time, when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) A new large Type A assisted living facility that co-mingles and processes laundry onsite [~~on-site~~] in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating. This separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system; and

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior;

(I) the exhaust must always operate when soiled linen is held in this area; and

(II) the area may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (A) of this paragraph; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) A new large Type A assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) A new large Type A assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.235. Fire Protection Systems Requirements for a New Large Type A Assisted Living Facility.

(a) Fire alarm and smoke detection system. A new large Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new large Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new large Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) - (D) of this paragraph.

(B) A new large Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new large Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 18.3.4.5.3, Nursing Homes [~~19.3.4.5.1, Corridors~~], in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraphs (A) and (B) of this paragraph.

(D) A new large Type A assisted living facility comprised of buildings containing living units with independent cooking equipment must additionally have:

(i) a smoke detector installed in all [~~in~~] resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(E) A new large Type A assisted living facility is not required to install smoke alarms, as required by 32.3.3.4.7 [~~32.3.4.7~~] Smoke Alarms, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, in addition to the smoke detectors required by subparagraphs (A) - (D) of this paragraph.

(3) Alarm control panel.

(A) A new large Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new large Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) A new large Type A assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) A new large Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new large Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. A new large Type A assisted living must ensure a fire alarm system provides emergency forces notification according to the requirements of 32.3.3.4.6, Emergency Forces Notification, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(b) Fire sprinkler system. A new large Type A assisted living facility must provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.3.3.5, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(c) Portable Fire Extinguishers. A new large Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of 32.3.3.5.7, Portable Fire Extinguishers, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, and the additional requirements of this subsection.

(1) A new large Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new large Type A assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new large Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen and walk-in mechanical room.

(4) A new large Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or is mounted in an approved cabinet.

(5) A new large Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new large Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

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 11. NEW LARGE TYPE B ASSISTED LIVING FACILITIES

26 TAC §§553.241, 553.242, 553.245, 553.246

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.241. Construction Requirements for a New Large Type B Assisted Living Facility.

(a) Structurally sound. A new large Type B assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads according to applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies.

(1) A new large Type B assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards.

(2) A large Type B assisted living facility is not required to be separated from a hospital or nursing facility unless the separation is required by NFPA 101 or the standards for licensing the hospital or nursing facility.

(c) Construction type. A new large Type B assisted living facility must ensure a building housing the facility meets the requirements of 18.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 18, New Health Care Occupancies.

(d) Interior finish. A new Large Type B assisted living facility must ensure interior wall, ceiling and floor finish materials meet the requirements of 18.3.3, Interior Finish, in NFPA 101, Chapter 18, New Health Care Occupancies.

(e) Vertical openings. A new large Type B assisted living facility must ensure vertical openings are protected according to the requirements of 18.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 18, New Health Care Occupancies.

§553.242. Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility.

(a) Resident bedrooms.

(1) A new large Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new large Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) A new large Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new large Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) A new large Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new large Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) [~~(a)(3)~~] of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new large Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new large Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new large Type B assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new large Type B assisted living facility must provide a staff area on each floor of a new large Type B assisted living facility and in each separate building containing resident sleeping rooms. A new large Type B assisted living facility must provide the following at each staff area:

(1) a desk or writing surface;

(2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.245 of this division (relating to Fire Protection Systems Requirements for a New Large Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new large Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new large Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new large Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new large Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.247 of this division (relating to Mechanical Requirements for a New Large Type B Assisted Living Facility).

(g) Resident living areas.

(1) A new large Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new large Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new large Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new large Type B assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.
Figure: 26 TAC §553.242(g)(1)(C) (No change.)

(2) A new large Type B assisted living facility must provide a dining area with appropriate furniture.

(A) A new large Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new large Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new large Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new large Type B assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.
Figure: 26 TAC §553.242(g)(2)(D) (No change.)

(3) A new large Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, a new large Type B assisted living facility must deduct a pathway, equal to the minimum corridor width according to §553.243 of this division (relating to Means of Egress Requirements for a New Large Type B Assisted Living Facility), from the measured area of the space.

(5) A new large Type B assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new large Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new large Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new large Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) General kitchen.

[~~(1) A new large Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.~~]

[~~(2) A new large Type B assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.~~]

(1) [~~(3)~~] A new large Type B assisted living facility that prepares food onsite [~~on-site~~] must provide a kitchen or dietary area that includes [~~to meet the general food service needs of the residents and must include~~] space for the following:

(A) storage, refrigeration, preparation, and serving food;

(B) dish and utensil cleaning which includes:

(i) a three-compartment sink large enough to immerse pots and pans; and

(ii) a mechanical dishwasher for washing and sanitizing dishes;

(C) a food preparation sink;

(D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser, and a waste receptacle;

(E) a handwashing lavatory that is readily accessible to every dish room area;

(F) refuse storage and removal; and

(G) floor drains in the kitchen and dishwashing areas.[~~; and~~]

[~~(H) a grease trap, if required by local authorities.~~]

(2) [~~(4)~~] A new large Type B assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.

(3) [~~(5)~~] A new large Type B assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(4) [~~(6)~~] A new large Type B assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

(5) [~~(7)~~] A new large Type B assisted living facility must maintain a separation between soiled and clean dish areas.

(6) [~~(8)~~] A new large Type B assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) A new large Type B assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) A new large Type B facility must ensure a kitchen serving a neighborhood or household provides a restroom accessible to kitchen staff located in close proximity to the kitchen.

(k) Kitchen janitorial facility.

(1) A new large Type B assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area except as described in paragraph (2) of this subsection.

(2) A new large Type B facility must ensure a kitchen serving a neighborhood or household provides a janitorial facility exclusively for the kitchen that is located in close proximity to the kitchen.

(3) A new large Type B assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(l) Finishes.

(1) A new large Type B assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls, and ceilings.

(2) A new large Type B assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) A new large Type B assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors. A new large Type B assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(n) Auxiliary serving kitchens.

(1) A new large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) A new large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this subsection.

(3) A new large Type B assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) A new large Type B assisted living facility must protect cooking facilities according to the requirements in §553.246 of this division (relating to Hazardous Area Requirements for a new Large Type B Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.246 of this division:

(A) microwave ovens;

(B) hot plates; or

(C) toasters.

(p) Food storage areas.

(1) A new large Type B assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) A new large Type B assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving so that food is not stored on the floor and must ensure shelves are adjustable wire type shelving.

(3) A new large Type B assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) A new large Type B assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) A new large Type B assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) A new large Type B assisted living facility that co-mingles and processes laundry onsite [~~on-site~~] in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating. This separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior;

(I) The exhaust must always operate when soiled linen is held in this area; and

(II) The area may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (A) of this paragraph; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) A new large Type B assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) A new large Type B assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.245. Fire Protection Systems Requirements for a New Large Type B Assisted Living Facility.

(a) Fire alarm and smoke detection system. A new large Type B assisted living facility must provide a fire alarm system meeting the requirements of 18.3.4, Detection, Alarm, and Communications Systems, in NFPA 101, Chapter 18, New Health Care Occupancies, as modified by this section.

(1) General. A new large Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new large Type B assisted living facility must install smoke detectors meeting the requirements of 18.3.4.5.3, Nursing Homes, [~~18.3.4.5.1, Corridors,~~] in NFPA 101, Chapter 18, New Health Care Occupancies.

(B) A new large Type B assisted living facility comprised of buildings containing living units with independent cooking equipment within the living unit, must additionally have:

(i) a smoke detector installed in all resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(3) Alarm control panel.

(A) A new large Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by

audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new large Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) A new large Type B assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) A new large Type B assisted living facility must ensure a fire alarm system is powered by a permanently wired [~~permanently-wired~~], dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new large Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. A new large Type B assisted living facility must ensure a fire alarm system automatically notifies emergency forces according to the requirements of 18.3.4.3.2, Emergency Forces Notification, in NFPA 101, Chapter 18, New Health Care Occupancies.

(b) Fire sprinkler system. A new large Type B assisted living facility must provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 18.3.5, in NFPA 101, Chapter 18, New Health Care Occupancies.

(c) Portable Fire Extinguishers. A new large Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new large Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new large Type B assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new large Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen, and walk-in mechanical room.

(4) A new large Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new large Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new large Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

§553.246. Hazardous Area Requirements for a New Large Type B Assisted Living Facility.

(a) A new large Type B assisted living facility must meet the requirements of 18.3.2 [~~19.3.2~~], Protection from Hazards, in NFPA 101, Chapter 18 [~~19~~], New Health Care Occupancies.

(b) A new large Type B assisted living facility must ensure flammable or combustible liquids, including gasoline, oil-based paint, charcoal lighter fluid, or similar products are not stored in a building housing residents.

(c) A new large Type B assisted living facility must protect any cooking operation according to the requirements of 18.3.2.5, Cooking Facilities, in NFPA 101, Chapter 18, New Health Care Occupancies.

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 12. SPECIALIZED ASSISTED LIVING FACILITIES

26 TAC §553.250

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.250. Construction Requirements for a Certified Alzheimer's Assisted Living Facility.

(a) Applicability. This section applies only to a Type B assisted living facility that has obtained a certification as a certified Alzheimer's assisted living facility according to the requirements of §553.27 of this chapter (relating to Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders) or §553.29 of this chapter (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing) and chooses to:

(1) secure certified Alzheimer's assisted living facility means of escape or exit doors using the approved locking arrangements described in this section; or

(2) create one or more certified Alzheimer's assisted living units segregated from other parts of the Type B assisted living facility by control doors using the approved locking arrangements described in this section.

(b) Small, fully locked certified Alzheimer's assisted living facility. A small Type B assisted living facility that has an Alzheimer's certification for the full licensed capacity of the small Type B assisted living facility and chooses to secure control doors or exterior doors using the approved locking arrangements described in subsection (g) or (h) of this section must meet the requirements for a small Type B assisted living facility according to §553.100(e) of this subchapter (relating to General Requirements), except as modified by this subsection.

(1) Resident living areas.

(A) An existing small Type B assisted living facility must ensure resident living areas meet the requirements of §553.227(b) of this subchapter (relating to Mechanical Requirements for a New Small Type B Assisted Living Facility).

(B) A new small Type B assisted living facility must ensure resident living areas meet the requirements of §553.212(g) of this subchapter (relating to Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility).

(C) A small, fully locked certified Alzheimer's assisted living facility that contains two or more certified Alzheimer's assisted living units separated by control doors, located on one floor of a building, located on multiple floors of a building, or located in multiple buildings, must ensure resident living areas in each separate certified Alzheimer's assisted living unit meet the requirements for resident living areas in a small Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(2) Resident-use plumbing fixtures.

(A) An existing small Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.127(b) of this subchapter (relating to Mechanical Requirements for an Existing Small Type B Assisted Living Facility).

(B) A new small Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.227(b) of this subchapter.

(C) A small, fully locked certified Alzheimer's assisted living facility that contains two or more certified Alzheimer's assisted living units separated by control doors, located on one floor of a building, located on multiple floors of a building, or located in multiple buildings, must ensure resident-use plumbing fixtures in each separate certified Alzheimer's assisted living unit meet the requirements for resident-use plumbing in a small Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(3) Monitoring station or staff area. A small, fully locked certified Alzheimer's assisted living facility that occupies only one floor of a building, and is not divided into two or more separated certified Alzheimer's assisted living units, must provide a staff area as follows.

(A) An existing small Type B assisted living facility must meet the requirements for a staff area according to §553.122(e) of this subchapter (relating to Space Planning and Utilization Requirements for an Existing Small Type B Assisted Living Facility).

(B) A new small Type B assisted living facility must meet the requirements for a staff area according to §553.222(e) of this subchapter (relating to Space Planning and Utilization Requirements for a New Small Type B Assisted Living Facility).

(C) A small Type B assisted living facility must provide a monitoring station meeting the requirements of subsection (f) of this section in each separate certified Alzheimer's assisted living unit, except:

(i) in a small Type B assisted living facility that contains two or more certified Alzheimer's assisted living units on one floor separated by control doors, one monitoring station must meet the requirements for a staff area according to subparagraph (A) or (B) of this paragraph; and

(ii) in a small Type B assisted living facility that contains two or more certified Alzheimer's assisted living units located on two or more floors of a building or located in multiple buildings, one monitoring station on each floor and in each building must meet the requirements for a staff area according to subparagraph (A) or (B) of this paragraph.

(4) Means of escape.

(A) An existing small Type B assisted living facility must meet §553.123 of this subchapter (relating to Means of Escape Requirements for an Existing Small Type B Assisted Living Facility) and must have at least two means of escape from every building and from every floor as required by NFPA 101.

(B) A new small Type B assisted living facility must meet the requirements of §553.223 of this subchapter (relating to Means of Escape Requirements for a New Small Type B Assisted Living Facility) and must have at least two means of escape from every building and from every floor as required by NFPA 101.

(5) Control doors. If control doors are locked, locking arrangements on control doors must meet the requirements of subsection (g) of this section.

(6) Exterior doors. If exterior doors are locked, locking arrangements on exterior doors must meet one of the following:

(A) the locking arrangement must meet the requirements for Delayed Egress Locking Systems in NFPA 101; or

(B) the locking arrangement must meet the requirements of subsection (h) of this section.

(7) Outdoor area. A small, fully locked certified Alzheimer's assisted living facility must provide an outdoor area meeting the requirements of subsection (j) of this section.

(c) Small Type B assisted living facility containing one or more certified Alzheimer's assisted living units. A small Type B assisted living facility that has a certified Alzheimer's capacity lower than the facility's licensed capacity and that has one or more certified

Alzheimer's assisted living units must meet the requirements for a small Type B assisted living facility according to §553.100(e) of this subchapter, except as modified by this subsection.

(1) Resident living areas.

(A) An existing small Type B assisted living facility must ensure resident living areas meet the requirements of §553.122(g) of this subchapter.

(B) A new small Type B assisted living facility must ensure resident living areas meet the requirements of §553.212(g) of this subchapter.

(C) A small Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must ensure resident living areas in each separate certified Alzheimer's assisted living unit meet the requirements for resident living areas in a small Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(2) Resident-use plumbing fixtures.

(A) An existing small Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.127(b) of this subchapter.

(B) A new small Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.227(b) of this subchapter.

(C) A small Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must ensure resident-use plumbing fixtures in each separate certified Alzheimer's assisted living unit meet the requirements for resident-use plumbing fixtures in a small Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(3) Monitoring station. A small Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must provide staff areas and monitoring stations as follows.

(A) An existing small Type B assisted living facility must meet the requirements for a staff area as required by §553.122(e) of this subchapter.

(B) A new small Type B assisted living facility must meet the requirements for a staff area as required by §553.222(e) of this subchapter.

(C) A small Type B assisted living facility must provide a monitoring station meeting the requirements of subsection (f) of this section in each separate certified Alzheimer's assisted living unit.

(4) Means of escape.

(A) An existing small Type B assisted living facility must meet §553.123 of this subchapter and must have at least two means of escape from every building and from every floor as required by NFPA 101.

(B) A new small Type B assisted living facility must meet the requirements of §553.223 of this subchapter and must have at least two means of escape from every building and from every floor as required by NFPA 101.

(5) Control doors. If control doors are locked, locking arrangements on control doors must meet the requirements of subsection (g) of this section.

(6) Exterior doors. If exterior doors are locked, locking arrangements on exterior doors must meet one of the following:

(A) the locking arrangement must meet the requirements for Delayed Egress Locking Systems in NFPA 101; or

(B) the locking arrangement must meet the requirements of subsection (h) of this section.

(7) Outdoor area. A small, fully locked certified Alzheimer's assisted living facility must provide an outdoor area meeting the requirements of subsection (j) of this section.

(d) Large, fully locked certified Alzheimer's assisted living facility. A large Type B assisted living facility that has an Alzheimer's certification for the full licensed capacity of the assisted living facility and chooses to secure control doors or exit doors using approved locking arrangements described in subsection (g) or (i) of this section must meet the requirements for a large Type B assisted living facility according to §553.100(e) of this subchapter, except as modified by this subsection.

(1) Resident living areas.

(A) An existing large Type B assisted living facility must ensure resident living areas meet the requirements of §553.142(g) of this subchapter (relating to Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility).

(B) A new large Type B assisted living facility must ensure resident living areas meet the requirements of §553.242(g) of this subchapter (relating to Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility).

(C) A large, fully locked certified Alzheimer's assisted living facility that contains two or more certified Alzheimer's assisted living units separated by control doors, located on one floor of a building, located on multiple floors of a building, or located in multiple buildings, must ensure resident living areas in each separate certified Alzheimer's assisted living unit meet the requirements for resident living areas in a Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(2) Resident-use plumbing fixtures.

(A) An existing large Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.147(b) of this subchapter (relating to Mechanical Requirements for an Existing Large Type B Assisted Living Facility).

(B) A new large Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.247(b) of this subchapter (relating to Mechanical Requirements for a New Large Type B Assisted Living Facility).

(C) A large, fully locked certified Alzheimer's assisted living facility that contains two or more certified Alzheimer's assisted living units separated by control doors, located on one floor of a building, located on multiple floors of a building, or located in multiple buildings, must ensure resident-use plumbing fixtures in each separate certified Alzheimer's assisted living unit meet the requirements for resident-use plumbing in a large Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(3) Monitoring station or staff area. A large, fully locked certified Alzheimer's assisted living facility that occupies only one floor of one building, and is not divided into two or more separate certified Alzheimer's assisted living units, must provide a staff area as follows.

(A) An existing large Type B assisted living facility must meet the requirements for a staff area as required by §553.142(e) of this chapter.

(B) A new large Type B assisted living facility must meet the requirements for a staff area as required by §553.242(e) of this subchapter.

(C) A large Type B assisted living facility must provide a monitoring station in each separate certified Alzheimer's assisted living unit and meeting the requirements of subsection (f) of this section, except:

(i) in a large Type B assisted living facility that contains two or more certified Alzheimer's assisted living units on one floor separated by control doors, one monitoring station must meet the requirements for a staff area according to subparagraph (A) or (B) of this paragraph; and

(ii) in a large Type B assisted living facility that contains two or more certified Alzheimer's assisted living units located on two or more floors of a building, or located in multiple buildings, one monitoring station on each floor and in each building must meet the requirements for a staff area according to subparagraph (A) or (B) of this paragraph.

(4) Means of egress.

(A) An existing large Type B assisted living facility must meet §553.143 of this chapter (relating to Means of Egress Requirements for an Existing Large Type B Assisted Living Facility) and must have at least two means of egress from every building and from every floor as required by NFPA 101.

(B) A new large Type B assisted living facility must meet the requirements of §553.243 of this chapter (relating to Means of Egress Requirements for a New Large Type B Assisted Living Facility) and must have at least two means of egress from every building and from every floor according to NFPA 101.

(5) Control doors.

(A) Cross corridor control doors, if locked according to subparagraph (B) of this paragraph, must:

(i) be a pair of swinging doors arranged so that each door swings in a direction opposite from the other;

(ii) have door leaves that must each provide a minimum clear width of 32 inches; and

(iii) if latching, must have a knob, handle, panic bar, or other simple type of releasing device.

(B) If control doors are locked, locking arrangements on control doors must meet the requirements of subsection (g) of this section.

(6) Exit doors. If exit doors are locked, locking arrangements on exit doors must meet one of the following:

(A) the locking arrangement must meet the requirements for Delayed Egress Locking Systems in NFPA 101; or

(B) the locking arrangement must meet the requirements of subsection (i) of this section.

(7) Outdoor area. A large, fully locked certified Alzheimer's assisted living facility must provide an outdoor area meeting the requirements of subsection (k) of this section.

(e) Large Type B assisted living facility containing one or more certified Alzheimer's assisted living units. A large Type B assisted living facility that has a certified Alzheimer's capacity lower than the facility's licensed capacity and has one or more certified Alzheimer's assisted living units must meet the requirements for a large Type B assisted living facility according to §553.100(e) of this chapter, except as modified by this subsection.

(1) Resident living areas.

(A) An existing large Type B assisted living facility must ensure resident living areas meet the requirements of §553.142(g) of this subchapter.

(B) A new large Type B assisted living facility must ensure resident living areas meet the requirements of §553.242(g) of this subchapter.

(C) A large Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must ensure resident living areas in each separate certified Alzheimer's assisted living unit meet the requirements for resident living areas in a large Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(2) Resident-use plumbing fixtures.

(A) An existing large Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.147(b) of this subchapter.

(B) A new large Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.247(b) of this subchapter.

(C) A large Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must ensure resident-use plumbing fixtures in each separate certified Alzheimer's assisted living unit meet the requirements for resident-use plumbing fixtures in a large Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(3) Monitoring station. A large Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must provide staff areas and monitoring stations as follows:

(A) an existing large Type B assisted living facility must meet the requirements for a staff area as required by §553.142(e) of this subchapter;

(B) a new large Type B assisted living facility must meet the requirements for a staff area as required by §553.242(e) of this chapter; and

(C) a large Type B assisted living facility must provide a monitoring station meeting the requirements of subsection (f) of this section in each separate certified Alzheimer's assisted living unit.

(4) Means of egress.

(A) An existing large Type B assisted living facility must meet §553.143 of this subchapter and must have at least two means of egress from every building and from every floor as required by NFPA 101.

(B) A new large Type B assisted living facility must meet the requirements of §553.243 of this chapter and must have at least two means of egress from every building and from every floor as required by NFPA 101.

(5) Control doors.

(A) Cross corridor control doors, if locked according to subparagraph (B) of this paragraph, must:

(i) be a pair of swinging doors arranged so that each door swings in a direction opposite from the other;

(ii) have door leaves that must each provide a minimum clear width of 32 inches; and

(iii) if latching, must have a knob, handle, panic bar or other simple type of releasing device.

(B) If control doors are locked, locking arrangements on control doors must meet the requirements of subsection (g) of this section.

(6) Exit doors. If exit doors are locked, the locking arrangements on exit doors must:

(A) meet the requirements for Delayed Egress Locking Systems in NFPA 101; or

(B) meet the requirements of subsection (i) of this section.

(7) Outdoor area. A large, fully locked certified Alzheimer's assisted living facility must provide an outdoor area meeting the requirements of subsection (k) of this section.

(f) Monitoring station requirements required by this section include:

(1) a writing surface, such as a desk or counter;

(2) a chair;

(3) task illumination at the task surface;

(4) a telephone or intercom; and

(5) lockable storage for resident records.

(g) Control door locking arrangements permitted by this section in a certified Alzheimer's assisted living facility must not be locked unless all the following requirements are met.

(1) The building must have an approved fire alarm system and an approved fire sprinkler system meeting the requirements of this subchapter.

(2) The locking device must be electronic and must be released when any of the following occurs:

(A) activation of the fire alarm system;

(B) activation of the fire sprinkler system;

(C) power failure to the certified Alzheimer's assisted living facility or to the locking device;

(D) activating a switch or button located at a monitoring station required by subsection (b) or (c) of this section; or

(E) activating a switch or button located at a staff area required by subsection (c) of this section.

(3) A keypad, credential reader, or buttons may be located at the control door for routine use by staff.

(4) Staff must be trained in all the methods of unlocking the control door.

(h) Exterior door locking arrangements for small certified Alzheimer's assisted living facilities permitted by this section must not be locked unless all the following requirements are met.

(1) The building must have an approved fire alarm system and an approved fire sprinkler system meeting the requirements of this subchapter.

(2) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.

(3) The locking device must release when any of the following occurs:

(A) activation of the fire alarm system;

(B) activation of the fire sprinkler system;

(C) power failure to the small certified Alzheimer's assisted living facility or to the locking device;

(D) activating a switch or button located at a monitoring station required by subsection (b) or (c) of this section; or

(E) activating a switch or button located at a staff area required by subsection (c) of this section.

(4) A keypad, credential reader, or buttons may be located at the exterior door for routine use by staff.

(5) A sign must be provided adjacent to any manual fire alarm pull required by NFPA 101 stating, "Pull to release exterior doors in an emergency."

(6) Staff must be trained in all the methods of unlocking the door.

(i) Exit door locking arrangements for large certified Alzheimer's assisted living facilities permitted by this section must not be locked unless all the following requirements are met.

(1) The building must have an approved fire alarm system and an approved fire sprinkler system meeting the requirements of this subchapter.

(2) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.

(3) The locking device must release when any of the following occurs:

(A) activation of the fire alarm system;

(B) activation of the fire sprinkler system;

(C) power failure to the large certified Alzheimer's assisted living facility or to the locking device;

(D) activating a switch or button located at a monitoring station required by subsection (d) or (e) of this section; or

(E) activating a switch or button located at a staff area required by subsection (e) of this section.

(4) A keypad, credential reader, or buttons may be located at the exterior door for routine use by staff.

(5) A manual fire alarm pull must be located within five feet of each exit door with a sign stating, "Pull to release door in an emergency."

(6) Staff must be trained in all the methods of unlocking the door.

(j) Outdoor area requirements for small certified Alzheimer's assisted living facilities required by subsection (b) or (c) of this section must meet the following requirements.

(1) The outdoor area must provide at least 800 square feet of area in at least one contiguous space.

(2) The outdoor area must be connected to, be part of, be controlled by, and be directly accessible from the small certified Alzheimer's assisted living facility.

(3) The outdoor area must be enclosed with walls or fencing that do not allow climbing or present a hazard to residents; and

(A) where a resident bedroom window does not face the wall or fence the minimum distance to the enclosure wall or fence from the building is eight feet if the wall or fence is parallel to the building;

(B) where a resident bedroom window faces the wall or fence the minimum distance to the enclosure wall or fence from the building is 20 feet if the wall or fencing is solid and 15 feet if the wall or fencing is open; and

(C) for unusual or unique site conditions, outdoor areas may have other configurations with the prior approval of HHSC.

(D) The minimum dimensions in subparagraphs (A) and (B) of this paragraph do not apply to:

(i) additional fencing erected along property lines; or

(ii) building setback lines for privacy or for meeting the requirements of local building authorities.

(4) A small certified Alzheimer's assisted living facility must provide at least one gate in the fence or wall with a continuous path of travel from the building to the gate.

(5) If any gate in the fence or wall is locked, the gate nearest the building must be locked with an electronic lock that operates the same as electronic locks specified in subsection (g) or (h) of this section and meet the requirements of NFPA 70 for exterior exposure.

(A) Additional gates may be locked according to the requirements of subsection (g) or (h) of this section or may be locked using keyed locks, provided all staff carry the keys at all times the staff are on duty at the small certified Alzheimer's assisted living facility.

(B) All gates may be locked using keyed locks, provided all staff carry the keys at all times the staff are on duty at the small certified Alzheimer's assisted living facility, and the outdoor area includes an area of refuge meeting the following requirements.

(i) If the small Type B assisted living facility obtained certification as a certified Alzheimer's assisted living facility before May 2, 2024, the area extends beyond a line parallel to the building at a minimum distance of 30 feet from the building.

(ii) If the small Type B assisted living facility obtained certification as a certified Alzheimer's assisted living facility on or after May 2, 2024, the area is located beyond a line parallel to the building at a minimum distance of 30 feet from the building.

(iii) The area of refuge must allow at least 15 square feet per person, including residents, staff, and visitors potentially present at the time of an emergency.

(k) Outdoor area requirements for large certified Alzheimer's assisted living facilities required by subsection (d) or (e) of this section must meet the following requirements.

(1) The outdoor area must provide at least 800 square feet of area in at least one contiguous space.

(2) The outdoor area must be connected to, be part of, be controlled by, and be directly accessible from the large certified Alzheimer's assisted living facility.

(3) The outdoor area must be enclosed with walls or fencing that do not allow climbing or present a hazard to residents and the following conditions apply.

(A) Where a resident bedroom window does not face the wall or fence the minimum distance to the enclosure wall or fence from the building is eight feet if the wall or fence is parallel to the building.

(B) Where a resident bedroom window faces the wall or fence the minimum distance to the enclosure wall or fence from the building is 20 feet if the wall or fencing is solid and 15 feet if the wall or fencing is open.

(C) For unusual or unique site conditions, outdoor areas may have other configurations with the prior approval of HHSC.

(D) The minimum dimensions in subparagraphs (A) and (B) of this paragraph do not apply to:

(i) additional fencing erected along property lines; or

(ii) building setback lines for privacy or for meeting the requirements of local building authorities.

(4) A large certified Alzheimer's assisted living facility must provide at least two means of egress from the enclosed outdoor area that are remote from each other and meet the requirements of NFPA 101.

(5) Where a required exit discharges into the enclosed area, a large certified Alzheimer's assisted living facility must meet the following additional requirements.

(A) If only one exit discharges into the enclosed area, a minimum of two gates must be remotely located from each other.

(B) If two or more exits discharge into the enclosed area and unrestricted entry access can be made at each door, a minimum of one gate is required.

(C) Any gate must be located to provide a continuous path of travel from the building exit to a public way, including walkways of concrete, asphalt, or other approved materials.

(D) If gates are locked, the gate nearest the exit from the building must be locked with an electronic lock that operates the same as electronic locks specified in subsection (g) or (i) of this section and meets the requirements of NFPA 70 for exterior exposure.

(i) Additional gates may be locked according to the requirements of subsection (g) or (i) of this section or be locked using keyed locks, provided all staff carry the keys at all times they are on duty at the large certified Alzheimer's assisted living facility.

(ii) All gates may be locked using keyed locks, provided all staff carry the keys at all times the staff are on duty at the large certified Alzheimer's assisted living facility and the outdoor area includes an area of refuge meeting the following requirements.

(I) If the large Type B assisted living facility or the certified Alzheimer's assisted living unit was certified as a certified Alzheimer's assisted living facility before May 2, 2024, the area extends beyond a line parallel to the building at a minimum distance of 30 feet from the building.

(II) If the large Type B assisted living facility or the certified Alzheimer's assisted living unit is certified as a certified Alzheimer's assisted living facility on or after May 2, 2024, the area is located beyond a line parallel to the building at a minimum distance of 30 feet from the building.

(III) The area of refuge must allow at least 15 square feet per person, including residents, staff, and visitors potentially present at the time of an emergency.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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SUBCHAPTER E. STANDARDS FOR LICENSURE

26 TAC §§553.253, 553.255, 553.257, 553.259, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271, 553.273, 553.275, 553.277, 553.279, 553.281, 553.283, 553.285, 553.287, 553.289, 553.291 - 553.293, 553.295

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments and new section implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.253. Employee Qualifications and Training.

(a) Manager qualifications and training. The [~~Each~~] facility must designate, in writing, a manager to have authority over the operation.

(1) In a small facility [~~Qualifications. In small facilities~~], the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation.

(2) In a large facility [~~facilities~~], the manager must have:

(A) an associate [~~associate's~~] degree in nursing, health care management, or a related field;

(B) a bachelor's degree; or

(C) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in the health care industry [~~management~~].

(3) Manager training. A manager must complete a 24-hour training course on the management of assisted living facilities that meets the requirements in this subsection within the first 12 months of employment as manager.

[~~(2)~~] [~~Training in management of assisted living facilities. A manager must complete at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia), resident assessment and skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on accessibility requirements under the Americans with Disabilities Act; community resources; ethics, and financial management.~~]

[~~(A)~~] [~~The course must be at least 24 hours in length.~~]

[~~(i)~~] [~~A manager must complete eight hours of training on the assisted living standards within the first three months of employment.~~]

(A) [~~(ii)~~] The 24-hour training requirement may not be met through in-services at the facility, but may be met through structured, formalized classes, correspondence courses, training videos, or computer-based education programs [~~distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit~~].

(B) The 24-hour training course must be provided or produced by academic institutions or established state or national assisted living organizations or associations.

(C) Subject matter that deals with the internal affairs of an organization does not qualify for credit.

(D) The 24-hour course of education must include:

(i) eight hours based on the assisted living standards established by this chapter;

(ii) typical characteristics of residents in assisted living facilities, including dementia, and skills for working with residents;

(iii) conducting resident evaluations;

(iv) basic principles of management;

(v) food and nutrition services;

(vi) basic infection prevention and control principles;

(vii) federal laws, with an emphasis on accessibility requirements under the Americans with Disabilities Act;

(viii) use of community resources as they apply to residents in an assisted living facility;

(ix) ethics; and

(x) financial management.

[~~(iii)~~ ~~Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.~~]

[~~(B) A manager who can show documentation of a previously completed comparable course of study are exempt from the training requirements.~~]

[~~(C) A manager must complete the training required by subparagraph (A) or (B) of this paragraph, as applicable, by the first anniversary of employment as manager.~~]

(E) [~~(D)~~] An assisted living manager who was employed by a licensed assisted living facility as the manager and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 90 [~~30~~] days, is exempt from the 24-hour training requirement.

(4) [~~(3)~~] Continuing education for managers. After the first 12 months as manager, a manager must complete 12 hours of continuing education before the next anniversary of employment as manager. Annual continuing education must include at least two of the following

topics: [All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:]

(A) resident and provider rights and responsibilities; [, abuse and neglect, and confidentiality;]

(B) abuse, neglect and exploitation;

(C) resident and staff confidentiality;

(D) [(B)] basic principles of management;

(E) [(C)] skills for working with residents, families, and other professional service providers;

(F) [(D)] resident characteristics and needs;

(G) [(E)] community resources as they relate to residents;

(H) [(F)] accounting and budgeting;

(I) basic infection prevention and control principles;

(J) [(G)] basic emergency first aid, including the Heimlich maneuver; and [; or]

(K) [(H)] federal laws, such as the Americans with Disabilities Act of 1990, as amended; the Civil Rights Act of 1991; the Rehabilitation Act of 1973, as amended; the Family and Medical Leave Act of 1993; and the Fair Housing Act, as amended.

(5) [(4)] Manager's responsibilities. The manager must be on duty for at least 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who: [may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.]

(A) may have responsibility for no more than 16 residents in no more than four facilities; and

(B) must be available by phone when conducting facility business off-site.

(6) [(5)] Manager's absence. [An employee competent and authorized to act in the absence of the manager must be designated in writing.]

(A) The facility must designate in writing an authorized employee to act in the absence of the manager.

(B) The facility must ensure the employee designated to act in the manager's absence is competent to do so.

(C) The facility must maintain a record of the designated employee currently authorized to act in the manager's absence.

(b) Attendants. [Full-time facility attendants must be at least 18 years old or a high-school graduate.]

(1) An attendant must be at least 18 years old or a high school graduate.

(2) [(1)] An attendant must be present [in the facility] at all times when residents are in the facility.

[(2) Attendants are not precluded from performing other functions as required by the facility.]

(c) Staffing.

(1) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs and acuity of the residents, as identified in their service plans.

(2) A facility must have dedicated staff on duty for each shift and must not share on-duty staff with another licensed facility or provider type, such as another assisted facility, a home and community support services agency, or a nursing facility.

(3) A facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern.

(A) A facility must post its normal 24-hour staffing pattern monthly in accordance with §553.291 of this subchapter (relating to Postings).

(B) A facility's posted 24-hour staffing pattern must include:

(i) the number of attendants scheduled to work each shift;

(ii) the number of nurses scheduled to work each shift if the facility has nurses on staff;

(iii) the number of medication aides scheduled to work each shift if the facility has medication aides on staff; and

(iv) office hours of the facility manager.

[(2) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §553.271 of this subchapter (relating to Postings).]

(4) [(3)] A facility must have sufficient staff to:

(A) maintain order, safety, and cleanliness;

(B) assist with medication regimens;

(C) prepare and serve meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;

(D) assist with laundry;

(E) ensure [assure] that each resident receives the kind and amount of supervision and care required to meet his or her basic needs, including specified nighttime care or supervision requirements; and

(F) ensure safe evacuation of the facility in the event of an emergency.

(5) A facility must not use a companion care provider or solicit or involve resident family members to provide care for a resident to mitigate staffing shortages.

(6) [(4)] A facility must meet the applicable staffing requirements for night shift as follows [described in this subparagraph].

(A) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(B) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(d) Staff training. The facility must document that staff [members] are competent to provide personal care before assuming these responsibilities and have received: [the following training.]

(1) [All staff members must complete] four hours of orientation that covers [before assuming any job responsibilities. Training must cover], at a minimum: [, the following topics:]

(A) reporting of abuse, neglect and exploitation [and neglect];

(B) confidentiality of resident information;

(C) universal precautions;

(D) conditions about which they should notify the facility manager;

(E) residents' rights; [and]

(F) basic infection prevention and control principles; and

(G) [(F)] emergency and evacuation procedures.

(2) In addition to the requirements in paragraph (1) of this subsection, attendants [Attendants] must complete 16 hours of on-the-job supervision and training directly [within the first 16 hours of employment] following orientation. Training must include:

(A) assisting residents [providing assistance] with the activities of daily living;

(B) health conditions and diagnoses of residents in the facility and how they may affect provision of care [resident's health conditions and how they may affect provision of tasks];

(C) safety measures to prevent accidents and injuries;

(D) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or is experiencing [experiences] a sudden change in physical or cognitive [mental] status;

(E) managing disruptive behavior;

(F) behavior management, such as the [for example,] prevention of aggressive behavior and de-escalation techniques, [practices to decrease the frequency of the use of restraint,] and alternatives to restraints; [and]

(G) basic infection prevention and control principles; and

(H) [(G)] fall prevention.

(3) An attendant [Direct care staff] must complete six documented hours of continuing education annually, based on the individual's hire date. One hour of the annual continuing education must be in fall prevention and one hour must be in behavior management such as preventing aggressive behavior and de-escalation techniques and alternatives to restraints, and both topics must be competency-based. Subject matter for the annual continuing education must address the unique needs of the facility and may include [each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include]:

(A) promoting resident dignity, independence, individuality, privacy, and choice;

(B) resident rights and principles of self-determination;

(C) communication techniques for working with residents with hearing, visual, or cognitive impairment;

(D) communicating with families and other persons interested in the resident;

(E) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;

(F) basic infection prevention and control principles;

(G) [(F)] essential facts about common physical, emotional, cognitive, and mental disorders such as [, for example,] arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, mental illness, and [or] stroke;

(H) [(G)] cardiopulmonary resuscitation (CPR);

(I) [(H)] common medications and side effects, including psychotropic medications; [, when appropriate;]

(J) [(I)] recognizing the symptoms of a [understanding] mental health concern [illness];

(K) [(J)] conflict resolution and de-escalation techniques; and

(L) [(K)] information regarding community resources as they relate to resident needs.

(4) A facility that employs [Facilities that employ] licensed nurses, certified nurse aides, or certified medication aides must ensure that staff members in these positions receive [provide] annual in-service training, appropriate to their job responsibilities, including [from one or more of the following areas]:

(A) communication techniques and skills useful when [providing geriatric care (skills for] communicating with the hearing impaired, visually impaired, and cognitively impaired; therapeutic touch; and recognizing communication that indicates psychological abuse[)];

(B) assessment and interventions related to the common physical and psychological changes of aging for each body system;

(C) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;

(D) common emergencies of geriatric residents and how to prevent them, such as [for example] falls, choking on food or medicines, and injuries from restraint use;

(E) recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute angle-closure glaucoma, and respiratory distress and obtaining emergency treatment;

(F) [(E)] common mental and cognitive disorders with related nursing implications; and

(G) [(F)] ethical and legal issues regarding advance directives, abuse, neglect, and exploitation [and neglect], guardianship, and confidentiality.

§553.255. All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder.

(a) A facility must adopt, implement, and enforce a written policy that:

(1) requires a facility employee who provides personal [direct] care services to a resident with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to residents with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a resident with Alzheimer's disease or a related disorder meet the specific identified needs of the resident relating to the diagnosis of Alzheimer's disease or a related disorder.

(b) The training required for facility employees under subsection (a)(1) of this section must include information about:

(1) symptoms of dementia;

(2) stages of Alzheimer's disease;

(3) person-centered behavioral interventions; and

(4) communication with a resident with Alzheimer's disease or a related disorder.

§553.257. Personnel [~~Human Resources~~].

(a) Personnel records. A facility must keep current and complete personnel records on a facility employee for review by HHSC staff including:

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in §553.277(e) [~~§553.261(f)~~] of this subchapter (relating to Infection Prevention and Control [~~Coordination of Care~~]);

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in §553.277(d) [~~§553.261(f)~~] of this subchapter;

(6) the signed statement from the employee referenced in §553.293 [~~§553.273~~] of this subchapter (relating to Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities), acknowledging that the employee may be criminally liable for the failure to report abuse, neglect, and exploitation; and

(7) a signed disclosure statement[~~,~~] indicating whether the employee:

(A) has been convicted of an offense described in Texas Health and Safety Code §250.006; and

(B) has lived in a state other than Texas within the past five years.

(b) Investigation of facility employees.

(1) A facility must comply with the provisions of Texas Health and Safety Code, Chapter 250.

(2) Before a facility hires an employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine if the individual is designated in either registry as unemployable based on employee misconduct. Both registries can be accessed on the HHSC Internet website.

(3) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable or who has been convicted of an offense listed in Texas Health and Safety Code §250.006 as a bar to employment or is a contraindication to employment with the facility.

(4) A facility must provide notification about the EMR to an employee in accordance with §561.3 of this title [~~26 TAC §711.1413~~] (relating to Employment and Registry Information).

(5) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR at least once every 12 months to determine if the employee is designated in either registry as unemployable [~~at least every 12 months~~].

(6) A facility must keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(7) If an applicant for employment indicates on the disclosure statement that he or she [~~they~~] have lived in another state within the past five years, the facility must conduct a name-based criminal history check in each state in which the applicant previously resided within the five-year period. A facility may hire the applicant pending the results of the name-based criminal history check in each state, but the employee must not be in a position that has direct contact with residents.

§553.259. Admission Policies and Procedures.

(a) Admission policies and disclosure statement.

(1) A facility must not admit a resident under the age of 18 years unless the person is an emancipated minor.

(2) [~~(1)~~] A facility must not admit [~~or retain~~] a resident whose needs cannot be met by the facility and who cannot secure the necessary services from an outside resource. [~~As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all NFPA 101 and physical plant requirements in Subchapter D of this chapter (relating to Facility Construction), and, as applicable, §553.311 (relating to Physical Plant Requirements for Alzheimer's Units), based on each resident's evacuation capabilities, except as provided in subsection (e) of this section.~~]

(3) [~~(2)~~] The facility must provide [~~There must be~~] a written admission agreement to the resident before admitting the resident to the facility. [~~between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.~~]

(A) The agreement must specify such details as services to be provided and the charges for the services.

(B) If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(C) The admission agreement must not conflict with the standards set forth in this chapter.

(4) [~~(3)~~] A facility must share a copy of the facility's [~~facility~~] disclosure statement, rate schedule, and a resident's individual [~~resident~~] service plan with an outside resource that provides [~~outside resources that provide any additional~~] services to the [a] resident. An outside resource [~~Outside resources~~] must provide the facility [~~facilities~~] with a copy of its care plan for the resident [~~their resident care plans~~] and must document, at the facility, any services provided to the resident [~~,~~] on the day provided.

(5) [~~(4)~~] In addition to the facility disclosure statement, a facility that advertises, markets, or otherwise promotes that it provides services, including memory care services, to residents with Alzheimer's

disease and related disorders, must provide to each resident the Assisted Living Facility Memory Care Disclosure Statement. The facility must disclose whether the facility is certified to provide specialized care to residents with Alzheimer's disease or related disorders.

(A) A facility that is Alzheimer's certified and provides the Assisted Living Facility Memory Care Disclosure Statement to a resident, must also provide HHSC Form 3641, Alzheimer's Assisted Living Facility Disclosure Statement.

(B) A facility that is not Alzheimer's certified and provides the Assisted Living Facility Memory Care Disclosure Statement, to a resident does not need to provide HHSC form 3641, Alzheimer's Assisted Living Disclosure Statement.

[(5) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.]

(6) The facility must secure, upon [at the time of] admission of a resident, the resident's [the following identifying information]:

(A) full name [of resident];

(B) Social Security [social security] number;

(C) usual residence (where the resident lived before admission);

(D) sex;

(E) marital status;

(F) date of birth;

(G) place of birth;

(H) []usual occupation (during most of working life);

(I) family, other persons named by the resident, and physician for emergency notification;

(J) pharmacy preference; and

(K) Medicaid/Medicare number, if applicable [available].

(7) A facility that allows pets must implement, maintain, and enforce a pet policy. The policy must address:

(A) sanitation, including pest control;

(B) safety, including any vaccination requirements or size restrictions;

(C) compliance with any local codes or ordinances; and

(D) service animals.

(b) Resident evaluation [assessment] and service plan. [Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.]

(1) A resident must have a health examination by a healthcare practitioner performed within 30 days before admission or 14 days after admission unless a transferring hospital or facility has provided a physical examination as part of the resident's medical record.

(2) Within 14 days after admission, the facility must complete an evaluation of a resident and develop an individual service plan for providing care that is based on the resident evaluation. The resident evaluation must be performed by the manager or a nurse, as applicable to a resident's individual requirements. The resident evaluation must be documented on a form developed by the facility. When a facility is unable to obtain information required for the resident evaluation, the facility must document its attempts to obtain the information.

(3) After the first resident evaluation, the facility must conduct a resident evaluation annually and upon any significant change in the resident's condition and note and date any necessary changes to the resident's service plan based on the most recent evaluation.

(4) Upon admission, the facility must conduct a resident evaluation on a resident admitted for respite care and develop an individual service plan based on the evaluation in accordance with this section. The facility may keep the service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(5) [(1)] A resident evaluation [The comprehensive assessment] must be conducted in person and include information regarding the resident's [the following items]:

(A) signed consent designating a legally authorized representative to make decisions on his or her behalf and the name and contact information for that person, if applicable;

(B) [(A)] location prior to admission [the location from which the resident was admitted];

(C) [(B)] primary language;

(D) [(C)] sleep-cycle issues;

(E) [(D)] behavioral symptoms;

(F) [(E)] psychosocial issues [(i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment)];

(G) [(F)] history of Alzheimer's disease or related disorders [disease/dementia history];

(H) [(G)] activities of daily living patterns such as wakening [(e.g., wakened] to toilet all or most nights, bathing in the morning or night, and preferring showering or bathing [bathed in morning/night, shower or bath)];

(I) [(H)] involvement patterns and preferred activity pursuits such as [e.g.], daily contact with relatives or [,] friends, attendance at [usually attended] religious services, involvement [involved] in group activities, preferred activity settings, and general activity preferences[)];

(J) [(I)] cognitive skills for daily decision-making such as [(e.g.,] independent, modified independent [independence], moderately impaired, or severely impaired[)];

(K) [(J)] communication such as [(e.g.,] ability to communicate with others and use of [,] communication devices[)];

(L) [(K)] physical functioning such as [(e.g.], transfer status,[;] ambulation status,[;] toilet use,[;] personal hygiene, and[;] ability to dress, feed, and groom self[)];

(M) [(L)] continence status;

(N) [(M)] nutritional status including [(e.g.,] weight changes, nutritional problems or approaches, any food allergies and

intolerances, therapeutic diets, and diets in observation of religious practices [.];

(O) [(N)] oral/dental status;

(P) [(O)] diagnoses;

(Q) [(P)] medications including whether [(e.g.,] administered, supervised, or self-administered [self-administers)];

(R) [(Q)] health conditions and possible medication side effects;

(S) [(R)] special treatments and procedures;

(T) [(S)] hospital admissions within the past six months or since last evaluation [assessment]; [and]

(U) [(T)] preventive health needs such as [(e.g.,] blood pressure monitoring and[,] hearing-vision assessment; [).]

(V) barriers to communicating in spoken English; and

(W) use of assistive devices, as defined in §553.3 of this chapter (relating to Definitions), in order to achieve the highest practicable quality of life and independence.

(6) [(2)] The service plan must be approved and signed by the resident or, if applicable, the resident's legally authorized representative, or acknowledged in writing by a person chosen by the resident to participate in the resident's care [responsible for the resident's health care decisions].

(A) The facility must provide care according to the service plan. [The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.]

(B) The facility must provide a copy of a resident's service plan to the resident or, as applicable, the resident's legally authorized representative upon admission.

[(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.]

[(4) Emergency admissions must be assessed, and a service plan developed for them.]

(c) Resident policies.

(1) The facility must [Before admitting a resident, facility staff must] explain the facility's disclosure statement and provide a copy of it [the disclosure statement] to the resident [, family,] or the resident's responsible party. A facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document that a copy of the disclosure statement was delivered and to whom [receipt of the disclosure statement].

(2) The facility must provide residents with a copy of the Resident's Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's legally authorized representative or responsible party [immediate family], and document the applicable party's [family's] receipt of, the HHSC telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §553.293 [§553.273] of this subchapter (relating to Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities).

(4) The facility must have written policies regarding the characteristics of residents accepted, services provided, charges, refunds, responsibilities of the facility and residents, use of facility space and amenities by [privileges of] residents, and other rules and regulations that residents must follow and make a copy available to a resident, legally authorized representative, or responsible party.

[(5) The facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission.]

(5) The facility must notify residents and their legally authorized representatives, as applicable, whenever there are any important changes to resident [Documented notification of any changes to the] policies referenced in paragraph (4) of this subsection at least 30 days [must occur] before the effective date of the changes.

(6) [Before or upon admission of a resident, a] The facility must provide a document that contains HHSC rules and the facility's policies relating to restraint and seclusion prior to or upon admission [notify the resident and, if applicable, the resident's legally authorized representative, of HHSC rules and the facility's policies related to restraint and seclusion].

(7) The facility must provide a resident and the resident's legally authorized representative with a written copy of the facility's emergency preparedness plan or an evacuation summary, as required under §553.295(d) [§553.275(d)] of this subchapter (relating to Emergency Preparedness and Response).

(8) A facility that uses an electronic method for any documentation or notification required under this subsection must implement a procedure for printing the information for a resident, legally authorized representative, or responsible party who requests a printed copy.

(d) Advance directives.

(1) The facility must develop, maintain, and enforce written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold such as cardiopulmonary resuscitation (CPR) in accordance with an advance directive.

(2) A facility that employs a nurse must ensure policies address nurse interventions during an emergent situation in accordance with Texas Board of Nursing rules at Texas Administrative Code (TAC), Title 22 §217.11 (relating to Standards of Nursing Practice).

(3) [(2)] The facility must provide written notice of these policies to residents upon admission to the facility [at the time they are admitted to receive services from the facility].

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) the resident's legally authorized representative [a person responsible for the resident's health care decisions];

(iii) the resident's spouse;

(iv) the resident's adult child; or

(v) the resident's parents.[; or

[(vi) the person admitting the resident.]

(B) If the facility is unable, after a diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(4) [(3)] If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to [receive the notice], the facility must provide the written notice at the time the resident becomes able to receive the notice.

(5) [(4)] HHSC imposes an administrative penalty of $500 for failure to inform the resident of facility policies regarding the implementation of advance directives.

(A) HHSC sends a facility written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which HHSC sends written notice to a facility, the facility must give written consent to the penalty or make a written request to HHSC for an administrative hearing.

(C) Hearings will be [are] held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

[(e) Inappropriate placement in Type A or Type B facilities.]

[(1) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the resident experiences a change of condition but continues to meet the facility evacuation criteria.]

[(A) If HHSC determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from HHSC, the facility submits the following to the HHSC regional office:]

[(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;]

[(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:]

[(I) the resident wants to remain at the facility; or]

[(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and]

[(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.]

[(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.]

[(2) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements for the evacuation of a designated resident referenced in §553.5 of this chapter (relating to Types of Assisted Living Facilities).]

[(A) If, during a site visit, HHSC determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, to the HHSC regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.]

[(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, from the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.]

[(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the HHSC regional office:]

[(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;]

[(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:]

[(I) the resident wants to remain at the facility; or]

[(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;]

[(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;]

[(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:]

[(I) specific staff positions that will be on duty to assist with evacuation and their shift times;]

[(II) specific staff positions that will be on duty and awake at night; and]

[(III) specific staff training that relates to resident evacuation;]

[(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;]

[(vi) a copy of the facility's emergency evacuation plan;]

[(vii) a copy of the facility fire drill records for the last 12 months;]

[(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;]

[(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;]

[(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;]

[(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by HHSC, including:]

[(I) the resident's medical condition and related nursing needs;]

[(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;]

[(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;]

[(IV) specific staffing needs; and]

[(V) services that are provided by an outside provider;]

[(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and]

[(xiii) service plans of other residents, if requested by HHSC.]

[(D) A facility must meet the following criteria to receive a waiver from HHSC:]

[(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:]

[(I) staff is adequately trained;]

[(II) a sufficient number of staff are on all shifts to move all residents to a place of safety;]

[(III) residents will be moved to appropriate locations, given health and safety issues;]

[(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;]

[(V) the fire alarm signal is adequate;]

[(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;]

[(VII) there is a method to effectively communicate the actual location of the fire; and]

[(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and]

[(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.]

[(E) HHSC reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the HHSC regional office.]

[(F) Upon notification that HHSC has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, HHSC may determine that there is an immediate threat to the health or safety of a resident.]

[(G) HHSC reviews a waiver of evacuation during the facility's annual renewal licensing inspection.]

[(3) If an HHSC surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.]

[(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.]

[(B) A discharge required under this subsection must be made notwithstanding:]

[(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and]

[(ii) the terms of any contract.]

[(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the HHSC regional office, or HHSC denies the waiver as described in paragraph (2) of this subsection, HHSC may:]

[(A) assess an administrative penalty if HHSC determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when HHSC conducts a future onsite visit; or]

[(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code, Chapter 247, Subchapter C, if HHSC determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.]

[(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.]

[(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of HHSC training on aging in place and retaliation.]

§553.261. Inappropriate Placement in a Type A or Type B Facility.

(a) An HHSC surveyor or a facility may determine that a resident is inappropriately placed in the facility if the resident experiences a change of condition.

(1) If an HHSC surveyor or a facility determines a resident is inappropriately placed but the resident continues to meet the facility evacuation criteria according to §553.5 of this chapter (relating to Types of Assisted Living Facilities), the facility must follow the process in subsection (b) of this section.

(2) If an HHSC surveyor or a facility determines a resident is inappropriately placed and the resident can no longer meet facility evacuation criteria according to §553.5 of this chapter, the facility must follow the process in subsection (c) of this section, including applying for an evacuation waiver from HHSC.

(b) If both the resident and the facility want the resident to remain despite an HHSC surveyor or the facility determining that the resident is inappropriately placed, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from HHSC, the facility submits to the HHSC regional office:

(1) a completed Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and cognitive status;

(2) a completed Resident's Request to Remain in Facility, Form 1125, indicating that:

(A) the resident wants to remain at the facility; or

(B) if the resident lacks capacity to provide a written statement, the resident's legally authorized representative or responsible party wants the resident to remain at the facility; and

(3) a completed Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(c) If, during a site visit, HHSC determines that a resident is inappropriately placed at the facility and both the resident and the facility want the resident to remain, the facility must request an evacuation waiver, as described in paragraph (1) of this subsection, to the HHSC regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A.

(1) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the HHSC regional office:

(A) a completed Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(B) a completed Resident's Request to Remain in Facility, Form 1125, indicating that:

(i) the resident wants to remain at the facility; or

(ii) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(C) a completed Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(D) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(i) specific staff positions that will be on duty to assist with evacuation and their shift times;

(ii) specific staff positions that will be on duty and awake at night; and

(iii) specific staff training that relates to resident evacuation;

(E) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(F) a copy of the facility's emergency evacuation plan;

(G) a copy of the facility fire drill records for the last 12 months;

(H) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, either:

(i) signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed; or

(ii) signed by the facility acknowledging notification to the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) that the resident's evacuation capability has changed;

(I) a copy of a completed Fire Suppression Authority Notification, Form 1129, either:

(i) signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed; or

(ii) signed by the facility acknowledging notification to the local fire suppression authority that the resident's evacuation capability has changed;

(J) a copy of the resident's most recent resident evaluation that addresses the areas required by subsection (c) of this section and that was completed within the previous 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(K) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by HHSC, including:

(i) the resident's medical condition and related nursing needs;

(ii) hospitalizations within the previous 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(iii) any significant change in condition in the previous 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(iv) specific staffing needs; and

(v) services that are provided by an outside resource;

(L) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(M) copies of service plans of other residents, if requested by HHSC.

(2) A facility must meet the following criteria to receive a waiver from HHSC.

(A) The emergency plan submitted in accordance with paragraph (1)(D) of this subsection must ensure that:

(i) staff is adequately trained;

(ii) a sufficient number of staff are on all shifts to move all residents to a place of safety;

(iii) residents will be moved to appropriate locations, given health and safety issues;

(iv) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(v) the fire alarm signal is adequate;

(vi) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(vii) there is a method to effectively communicate the actual location of the fire; and

(viii) the plan satisfies any other safety concerns that could adversely affect residents' safety in the event of a fire; and

(B) the emergency plan must not adversely affect other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(3) HHSC reviews the documentation submitted under this section and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the HHSC regional office.

(4) Upon notification that HHSC has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, HHSC may determine that there is an immediate threat to the health or safety of a resident.

(5) HHSC reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(d) If HHSC determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this section, the facility must discharge the resident.

(1) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(2) A discharge required under this subsection must be made notwithstanding:

(A) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(B) the terms of any contract.

(e) If a facility is required to discharge the resident because the facility has not submitted the written statements required by this section to the HHSC regional office, or HHSC denies the waiver as described in subsection (c) of this section, HHSC may:

(1) assess an administrative penalty if HHSC determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when HHSC conducts a future onsite visit; or

(2) seek other sanctions, including an emergency suspension or closing order against the facility under Texas Health and Safety Code, Chapter 247, Subchapter C, if HHSC determines there is a significant risk and immediate threat to the health and safety of a resident.

(f) The facility's disclosure statement must notify a resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

§553.263. Resident Transfer and Discharge.

(a) The facility must have and enforce a policy relating to resident transfer and discharge. The policy must:

(1) ensure a process of written transfer or discharge in accordance with subsection (c) of this section;

(2) be written in a manner the resident and the resident's legally authorized representative, if applicable, understands; and

(3) address whether a facility has a process for appealing a discharge, and if so, state that the appeals process:

(A) allows a resident 10 calendar days from the date of the discharge notice to challenge a discharge or transfer for just cause; and

(B) informs the resident of the availability of intervention and assistance.

(b) A facility may transfer or discharge a resident only if:

(1) the transfer or discharge is for the resident's welfare and the resident's needs cannot be met by the facility;

(2) the resident's health is improved sufficiently so that services are no longer needed and both the resident and the facility wish to terminate the admission agreement;

(3) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;

(4) the facility ceases to operate or to participate in the program that reimburses the facility for the resident's treatment or care; or

(5) the resident fails, after reasonable and appropriate notice, to pay the facility for services.

(c) Except in an emergency, as provided in subsection (f) of this section, a facility must provide a resident written notice of transfer or discharge at least 30 days before the date of transfer or discharge. The notice must state:

(1) that the facility intends to transfer or discharge the resident;

(2) the reason for the transfer or discharge;

(3) the effective date of the transfer or discharge;

(4) if the resident is to be transferred, the location to which the resident will be transferred; and

(5) the facility's appeal rights available to the resident, if any.

(d) A facility must develop a plan of transfer or discharge with input from the resident, the resident's health care practitioners, attending physician, and the resident's legally authorized representative, if applicable.

(e) A facility may immediately transfer or discharge a resident only:

(1) at the request of the resident or the resident's legally authorized representative;

(2) if the resident's medical needs require transfer, such as in a medical emergency; or

(3) if the resident creates a serious or immediate threat to the health, safety, or welfare of another resident.

(f) When a facility transfers or discharges a resident, the facility must ensure that the transfer or discharge is documented in the resident's record and appropriate information is communicated to the receiving provider.

(1) Documentation must include:

(A) the reason for the transfer or discharge; and

(B) if the transfer or discharge is related to the facility's inability to meet the resident's needs:

(i) the specific resident's needs that cannot be met;

(ii) any change in the resident's condition that precipitated the facility's inability to meet the resident's needs;

(iii) all facility attempts to meet the needs of the resident; and

(iv) that the facility provided the resident and the resident's legally authorized representative or interested party with contact information for the toll-free number of the Ombudsman Program.

(2) A facility must obtain and retain documentation of the resident's physician's order for transfer or discharge in the resident's record when it is the reason for transfer or discharge.

(3) If the transfer or discharge is to protect the health and safety of another resident, the facility must have documentation in the resident's record of:

(A) the facility's reasonable efforts to mitigate and diffuse risks; and

(B) notice to HHSC of incidents when the resident created a serious or immediate threat to the health, safety, or welfare of other residents of the facility and the results of the facility investigation of the incidents.

(4) If the facility transfers a resident, the facility must retain documentation of all information the facility provided to the receiving health care institution or provider. The documentation must include all information necessary to ensure a safe and effective transition of care, including:

(A) contact information of the practitioner responsible for the care of the resident;

(B) resident legally authorized representative or responsible party's information, including contact information, if applicable;

(C) resident advance directive orders;

(D) all special instructions or precautions for ongoing care, as appropriate;

(E) current service plan; and

(F) transfer or discharge plan and summary.

§553.265. Respite Admissions.

(a) A person admitted for respite services is a resident and has all of the rights and privileges of a resident as stated in this chapter. A facility that admits a resident for respite services must do so in accordance with §553.259 of this division (relating to Admission Policies and Procedures).

(b) A facility must not provide respite admission for an individual who is receiving hospice services for the purposes of hospice inpatient care or hospice residential care.

(c) A facility must not admit a resident for respite services if it causes the facility to exceed its licensed capacity.

(d) A facility must ensure it has adequate staffing to meet the needs of residents admitted for the purposes of respite care and services.

§553.267. Medications.

(a) Medication services.

(1) A facility that provides medication administration, supervision, or storage must develop and implement policies and procedures for:

(A) residents who self-administer their medications;

(B) facility staff assisting or supervising a resident's medication regimen;

(C) medication administration by facility staff;

(D) medication storage;

(E) medication disposal; and

(F) if the facility stores controlled drugs, prevention of controlled drug diversions including:

(i) identification and management of controlled drug diversions;

(ii) notification and reporting procedures for identified controlled drug diversions; and

(iii) storage of controlled drugs.

(2) A facility that provides medication administration or supervision must have policies and procedures to ensure staff are available to administer or supervise and assist a resident with a medication according to the prescribing practitioner's orders.

(3) A facility that provides medication administration or supervision must maintain, for a resident who receives that service:

(A) a medication profile record which lists, from the prescription label of each prescribed medication, the medication's:

(i) name;

(ii) strength;

(iii) dosage;

(iv) date and quantity received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number; and

(viii) name of dispensing pharmacy; and

(B) a medication administration record that records:

(i) the name of any medication administered;

(ii) the date and time of administration;

(iii) the dose the resident received; and

(iv) whether a dose of medication was taken, missed, or refused, and the reason for missed doses; however, the recording of medication administration does not apply when the resident is away from the facility.

(4) A facility that provides medication administration or supervision must have a procedure to assist a resident who is away from the facility to maintain his or her medication regimen. To help with this, the facility may:

(A) ask the resident's health care practitioner to prescribe a medication schedule that coincides with the resident's presence in the facility; or

(B) give the medications to the resident or their family member upon leaving the facility.

(5) If the facility provides either of the methods under paragraph (4) of this subsection to assist a resident with medication while away, the facility must document the procedures that were followed in the resident's record.

(6) A facility that uses a preferred pharmacy must inform a resident of his or her right to choose his or her own pharmacy and document a resident's choice in the resident's record.

(A) If a facility uses a preferred pharmacy, the facility must develop and implement policies and procedures for a preferred pharmacy that identify:

(i) the name, address, and phone number of the facility's preferred pharmacy;

(ii) a description of the facility's expectation for medication packaging and delivery including the individual responsible for receiving medication deliveries at the facility; and

(iii) a cost analysis breakdown of any fee imposed on residents relating to the facility's preferred pharmacy that includes specifications on how the fee will be used.

(B) If the facility charges a fee for residents who receive medication administration or supervision but choose not to use the facility's preferred pharmacy, the facility must:

(i) waive the preferred pharmacy fee for a resident whose chosen pharmacy provides delivery and packaging options that meet the delivery and packaging requirements identified in the facility's policies and procedures; and

(ii) waive the preferred pharmacy fee for a resident who can provide or arrange ongoing delivery of medications that meets the delivery and packaging requirements identified in the facility's policies and procedures.

(C) A resident for whom the facility provides medication administration or supervision services who uses a pharmacy other than the facility's preferred pharmacy must sign a document authorizing the use of the facility's preferred pharmacy and acknowledging the resident's responsibility for any related costs in the event the resident's chosen pharmacy or arranged delivery service cannot provide a medication timely in accordance with the prescribing practitioner's order.

(b) Self-administration of medication.

(1) The facility must allow and encourage a resident who can self-administer his or her own medications without assistance to do so.

(2) In order to facilitate a resident's self-administration of a medication, staff may prepare and make available such items as water, juice, cups, and spoons.

(3) The facility must counsel a resident who self-administers his or her medications to ascertain whether the resident remains capable of doing so and whether security of medications can continue to be maintained:

(A) no less than once a month; and

(B) whenever the resident experiences a significant change in condition, as defined in §553.3 of this chapter (relating to Definitions) that might affect the resident's ability to self-administer his or her medications; or

(C) the resident's health care practitioner advises that the resident's medication regimen has changed due to suspected medication administration errors or noncompliance with his or her medication regimen.

(4) The facility must keep a written record of counseling that includes:

(A) resident name and date of counseling;

(B) resident current diagnoses; and

(C) documentation that the resident understands the medications he or she currently takes, including possible side effects and storage requirements.

(c) Supervision of a resident's medication regimen.

(1) A facility may supervise or assist with a resident's medication regimen if the resident is incapable of self-administering a medication without assistance. Medication supervision and assistance is limited to:

(A) obtaining medications from a pharmacy and listing the medications on a resident's medication profile record, as described in subsection (a) of this section;

(B) reminding a resident to take medications at the prescribed time;

(C) opening containers or packages and replacing lids;

(D) pouring a prescribed dose according to the medication profile record;

(E) handing poured medication to a resident, or using a hand over hand assistance method if the resident needs help getting the medication to his or her mouth, and monitoring and documenting whether the medication is taken or refused, in accordance with subsection (a) of this section;

(F) returning medications to the proper locked areas; and

(G) preparing and making available such items as water, juice, cups, and spoons.

(2) The facility must ensure that a person who supervises or assists with a resident's medication regimen:

(A) observes the resident take the medication;

(B) records a missed dose in the resident's record, in accordance with paragraph (a)(4) of this section; and

(C) reports any concerns about a resident's reaction to a medication or suspected noncompliance with the prescribed medication regimen to the resident's prescribing health care practitioner and primary health care practitioner and documents it in the resident's record.

(d) Facility administration of medication.

(1) Residents who choose not to or who cannot self-administer their medications must have their medications administered by a person who:

(A) holds a current license to administer the medication;

(B) holds a current medication aide permit and who:

(i) acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication; and

(ii) functions under the direct supervision of a licensed nurse on duty or on call by the facility; or

(C) is an employee of the facility to whom medication administration has been delegated by a registered nurse who has trained the employee to administer medications or verified their training in accordance with Texas Board of Nursing rules at Texas Administrative Code (TAC), Title 22, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(2) A resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating practitioner.

(3) Practitioner sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the resident.

(4) Medications provided to the facility by an entity other than a pharmacy or physician, such as from a resident's family, home

health provider, or hospice provider, must have an accompanying active and current prescribing practitioner's order.

(e) General.

(1) Facility staff must, as soon as practicable but within 24 hours, report any unusual reaction to a medication to the resident's prescribing health care practitioner, primary health care practitioner, and legally authorized representative, and document it in the resident's record.

(2) The facility must contact a resident's primary health care provider and legally authorized representative whenever health changes occur that may be attributed to the resident's medications.

(3) The facility must document any unusual reactions to medications or treatments, actions taken, and monitoring of reactions in the resident's record.

(f) Storage.

(1) The facility must provide a locked area for all medications. Examples of areas include:

(A) a central storage area;

(B) a medication cart; and

(C) a resident's room.

(2) The facility must store each resident's medications in their original containers with the labels intact, separately from all other residents' medications.

(3) A refrigerator must have a designated and locked storage area for medications that require refrigeration unless the refrigerator is inside a locked medication room or the resident's room.

(4) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(5) A resident who self-administers and keeps prescribed, over-the-counter, or potentially hazardous or dangerous medications or ointments in his or her room must have a designated storage area that prevents unauthorized access to the medications, such as a lock box or self-locking room door that remains closed when the resident is not present.

(6) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication or treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(g) Disposal.

(1) At least quarterly, a facility must dispose of medications that:

(A) have been discontinued by order of the resident's prescribing practitioner;

(B) remain after a resident is deceased or has transferred or discharged without taking the medications per paragraph (5) of this subsection; or

(C) have passed the expiration date.

(2) Medication destruction must be carried out by a licensed pharmacist, which can include a medication take-back program or pharmacy disposal drop-off unit.

(3) The facility must inventory and store medications awaiting disposal separately from current resident medications.

(4) Needles and hypodermic syringes with needles attached must be disposed of as required by 25 TAC §§1.131 - 1.137 (relating to Definition, Treatment, and Disposal of Special Waste from Health Care-Related Facilities).

(5) A resident's medications must be released, upon transfer or discharge, to the resident when a receipt has been signed by the resident or, as applicable, the resident's legally authorized representative.

§553.269. Accident, Injury, or Acute Illness.

(a) In the event of accident or injury that requires emergency medical, dental, or nursing care, such as from a fall or unexpected loss of consciousness, or in the event of apparent death, the facility must:

(1) make arrangements for emergency care or transfer to an appropriate place for treatment, such as a practitioner's office, clinic, or hospital, and back to the facility;

(2) immediately notify the resident's practitioner and resident's legally authorized representative; and

(3) describe and document the injury, accident, or illness. The report must contain a statement of final disposition and the facility must retain the report in accordance with §553.285 of this subchapter (relating to Resident Records and Retention).

(b) The facility must stock and maintain, in a single location that is always accessible to staff, first aid supplies to treat burns, cuts, and poisoning.

(c) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service, in accordance with §553.7 of this chapter (relating to Assisted Living Facility Services).

§553.271. Health Care Professional.

(a) A health care professional may coordinate the provision of services to a resident within the professional's scope of practice and as authorized under Texas Health and Safety Code, Chapter 247; however, a facility must not provide ongoing services to a resident that are comparable to the services available in a nursing facility licensed under Texas Health and Safety Code, Chapter 242.

(b) A resident may contract to have health care services delivered to the resident at the facility by a home and community support services agency licensed under Chapter 558 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) or with an independent health professional of the resident's choice.

§553.273. Activities Program.

(a) The facility must plan and offer a daily activity that is consistent with resident choice and preferences and that promotes the physical, mental, and social well-being of the residents.

(b) The facility must develop and follow a written daily activity schedule and, at least monthly, post the schedule in accordance with §553.291 of this subchapter (relating to Postings).

(c) The facility must encourage but never force a resident to participate in activities.

§553.275. Dietary Services.

(a) Food Preparation.

(1) A facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) A facility that prepares food onsite must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:

(A) is equipped to store, refrigerate, prepare, and serve food;

(B) is equipped to clean and sterilize food preparation surfaces, dishes, cookware and bakeware, cooking utensils, and eating utensils;

(C) provides for refuse storage and removal; and

(D) meets the requirements of the local fire, building, and health codes.

(b) Dietary staff.

(1) The facility must designate an employee to be responsible for the total food service of the facility.

(2) The facility must ensure that staff who work with or handle unpackaged food, food equipment or utensils, or food contact surfaces, complete an accredited food handler training course approved by the Texas Department of State Health Services or the American National Standards Institute.

(c) Diets and menus.

(1) The facility must offer at least three meals a day that include all five basic food groups in accordance with USDA Dietary Guidelines for Americans, at regularly scheduled times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. The five basic food groups include protein, dairy, grains, vegetables, and fruits.

(2) Food must be palatable and vary from week to week, taking into consideration resident preferences, including cultural preferences.

(3) The facility must provide a therapeutic diet as ordered by a resident's practitioner according to the resident's service plan.

(4) Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician.

(5) The facility may prepare and serve a therapeutic diet that can customarily be prepared by a person in a family setting.

(6) The facility must plan and post menus at least one week in advance, in accordance with §553.291 of this subchapter (relating to Postings) and menus must be followed as posted.

(7) Reasons for any variations from the posted menus must be documented and communicated to residents as soon as practicable.

(8) The facility must prepare menus that provide a nutritious, well-balanced diet that meets each resident's daily nutritional and special dietary needs and conscientious dietary preferences accounting for food allergies and intolerances, therapeutic diets, and diets in observation of religious practices, as documented in a resident's individual service plan in accordance with §553.259 of this subchapter (relating to Admission Policies and Procedures).

(9) The facility must retain records of menus as served for at least 30 days following the date of serving.

(d) Food supply and storage.

(1) The facility must maintain on the premises a supply of pantry-stable foods sufficient for a minimum of a four-day period and perishable foods for a minimum of a two-day period; and

(A) obtain foods from sources that comply with all laws relating to food and food labeling;

(B) store and label shelf-stable foods removed from their original packaging in plastic containers with tight fitting lids;

(C) store foods requiring refrigeration, such as meat and milk products, at 41 degrees Fahrenheit or below; and

(D) reseal or tightly seal, label, and date foods subject to spoilage.

(2) The facility must prepare and serve food with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination; and

(A) keep hot foods at 135 degrees Fahrenheit or above during preparation and serving, and reheat foods to a minimum of 165 degrees Fahrenheit;

(B) keep freezers at a temperature of zero degrees Fahrenheit or below; and

(C) keep refrigerators at a temperature of 41 degrees Fahrenheit or below, with the thermometer placed in the warmest area of the refrigerator and freezer to ensure proper temperature.

(e) Dietary hygiene and sanitation.

(1) Dietary staff, including staff that serves food to residents, must maintain appropriate hand hygiene and take all precautions to prevent contamination of food, including wearing gloves whenever applicable, and throwing away disposable gloves after one use.

(2) The facility must ensure that any food service employee who is infected with a communicable disease that can be transmitted by foods, a carrier of organisms that cause such a disease, or afflicted with a boil, an infected wound, or an acute respiratory infection not work in the food service area in any capacity until fully recovered from the illness or infection.

(3) Effective hair restraints including facial hair restraints, as applicable, must be worn by any individual assisting with food or working in a food service and preparation area, to prevent contamination of food.

(4) Tobacco products must not be used in the food preparation and service areas.

(5) Kitchen employees must wash their hands before returning to work after using the lavatory.

(6) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(7) A facility must follow sanitary dishwashing procedures and techniques.

(8) A facility must comply with local health ordinances or requirements for storing, preparing, and distributing food; cleaning dishes, equipment, and work area; and storing and disposing of waste.

(9) Facilities licensed for 17 or more residents must comply with Texas Administrative Code, Title 25 Chapter 228 (relating to Retail Food Establishments).

§553.277. Infection Prevention and Control.

(a) A facility must develop, implement, enforce, and maintain an infection prevention and control program that will provide a safe, sanitary, and comfortable environment and help prevent development and transmission of disease and infection.

(1) The infection prevention and control program must include policies and procedures that reduce the risk of spreading communicable diseases in the facility, including:

(A) monitoring key infectious agents, including multidrug-resistant organisms, as those terms are defined in §553.3 of this chapter (relating to Definitions);

(B) making a rapid influenza diagnostic test, as defined in §553.3 of this chapter, available to a resident who is exhibiting flu like symptoms;

(C) wearing personal protective equipment, such as gloves, a gown, or a mask when called on for anticipated exposure, and properly cleaning hands before and after touching another resident and in between glove changes;

(D) cleaning and disinfecting environmental surfaces, including doorknobs, handrails, light switches, control panels, and remote controls;

(E) using universal precautions for blood and bodily fluids; and

(F) removing soiled items (such as used tissues, wound dressings, incontinence briefs, and soiled linens) from the environment at least once daily, or more often if an infection or infectious disease is present or suspected.

(2) Personnel must handle, store, process, and transport linens in a manner that prevents the spread of infection.

(3) If a facility knows or suspects an employee has contracted a communicable disease that is transmissible to residents through food handling or direct resident care, the facility must exclude the employee from providing these services for the applicable period of communicability.

(4) A facility must maintain evidence of compliance with local and state health codes and ordinances regarding employee and resident health status.

(5) A facility must immediately report the name of any resident with a reportable disease as specified in Texas Administrative Code, Title 25, Chapter 97, Subchapter A (relating to Control of Communicable Diseases), to the city health officer, county health officer, or health unit director having jurisdiction, and implement appropriate infection control procedures as directed by the local health authority.

(b) During a declared public health emergency or disaster that impacts a facility, in addition to the rules in this section, a facility must also follow Chapter 570 Subchapter B of this title (relating to Assisted Living Facilities).

(c) A facility must comply with rules regarding special waste in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(d) A facility's infection prevention and control program must include a policy to protect residents from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224, and subsection (e) of this section.

(1) The policy must:

(A) require employees and contractors to receive facility-determined vaccines based on the level of risk the employee or contractor presents to residents in routine and direct exposure;

(B) specify the vaccines an employee or contractor is required to receive in accordance with subparagraph (A) of this paragraph;

(C) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(D) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention (CDC);

(E) include procedures the employee or contractor must follow to protect residents from exposure to disease from an employee or contractor who is exempt from the required vaccines, based on the level of risk the employee or contractor presents during routine and direct exposure to residents, such as:

(i) use of protective equipment, such as gloves and masks; and

(ii) reassignment of the employee or contractor to work with residents who are vaccinated or have reduced risk of contracting vaccine-preventable diseases;

(F) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action;

(G) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy; and

(H) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(2) The policy may:

(A) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(B) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code §81.003.

(e) A facility's infection prevention and control program must include a policy to minimize the risk for transmission of tuberculosis (TB).

(1) A facility must screen a new employee for TB within two weeks of employment, according to CDC screening guidelines and any additional guidance from HHSC.

(A) The facility must provide annual TB education to employees that includes the following:

(i) TB risk factors;

(ii) the signs and symptoms of TB disease; and

(iii) TB infection control policies and procedures.

(B) The facility may request evidence of TB screening and annual TB education from all persons who provide services under an outside resource contract.

(2) The facility's policies and procedures for resident TB screening must ensure compliance with the recommendations of a resident's attending physician and consistency with CDC guidelines. Residents have the right to refuse TB screening in accordance with §553.287 of this subchapter (relating to Rights).

§553.279. Restraints and Seclusion.

(a) Use of restraints.

(1) All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(2) As provided in §553.287(a) of this subchapter (relating to Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used; or

(B) if the use is necessary in an emergency to protect the resident or others from injury.

(3) For all situations outside of a behavioral emergency, a restraint must only be administered by an individual who is licensed, certified, or otherwise authorized to administer health care, including a physician, registered nurse, and licensed vocational nurse.

(4) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(5) In the event of a behavioral emergency, the facility must use only an acceptable restraint hold. An acceptable restraint hold is a hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (6) of this subsection. A restraint hold must be used for the shortest period of time necessary to ensure the protection of the resident and others.

(6) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(7) After the use of restraint, the facility must:

(A) with the resident's or the resident's legally authorized representative's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(B) if the resident refuses to see the physician, document the refusal in the resident's record.

(8) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify the following persons, as applicable, that the resident has been restrained:

(A) the resident's legally authorized representative; or

(B) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(9) Under the Health Insurance Portability and Accountability Act, if the facility is a "covered entity" as defined in 45 CFR §160.103, any notification provided under paragraph (8) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(10) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident evaluation required for each resident in §553.259(b) of this subchapter (relating to Admission Policies and Procedures).

(11) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(12) A facility may not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(b) Bed rails.

(1) A facility must not use bed rails for purposes of restraint.

(2) A facility must not use full bed rails. Grab bars, quarter rails, and half rails may be used if they do not hinder the resident's ability to enter or exit the bed.

(3) A facility must not use bed rails for residents who exhibit wandering behaviors, present a risk for elopement, or have a cognitive impairment that would increase the risk of injury with the use of bed rails.

(4) A facility must document discussion with the resident, legally authorized representative, or interested party, as appropriate, on the use of possible alternatives to bed rails, such as low beds and floor mats, prior to installing a bed rail.

(5) A facility must review the risks and benefits of bed rails with the resident or resident's legally authorized representative, as appropriate, and obtain signed informed consent prior to installation.

(6) A facility that allows the use of bed rails for resident safety or resident convenience must evaluate:

(A) the resident's ability to utilize the bed rail for convenience, such as getting in and out of the bed safely, risk of entrapment, and ability to maneuver around the bed rail;

(B) mattress size and fit to ensure no gapping exists between the bed rail that could cause a resident's head or limbs to become caught;

(C) the bed's dimensions to ensure they are appropriate for the resident's size and weight; and

(D) the manufacturer's recommendations and specifications for installing and maintaining the bed rails.

(7) The facility must review and document the installation, use, and maintenance of bed rails at least every 30 days.

(c) Self-release seat belts.

(1) For the purposes of this subsection, a "self-release seat belt" is a seat belt on a resident's wheelchair that the resident can demonstrate the ability to fasten and release without assistance. A self-release seat belt is not a restraint.

(2) Except as provided in paragraph (3) of this subsection, a facility must allow a resident to use a self-release seat belt if:

(A) the resident or the resident's legally authorized representative requests that the resident use a self-release seat belt;

(B) the resident consistently demonstrates the ability to fasten and release the self-release seat belt without assistance;

(C) the use of the self-release seat belt is documented in and complies with the resident's individual service plan; and

(D) the facility receives written authorization, signed by the resident or the resident's legally authorized representative, as applicable, for the resident to use the self-release seat belt.

(3) A facility that advertises as a restraint-free facility is not required to allow a resident to use a self-release seat belt if the facility:

(A) provides a written statement to all residents that the facility is restraint-free and is not required to allow a resident to use a self-release seat belt; and

(B) makes reasonable efforts to accommodate the concerns of a resident who requests a self-release seat belt in accordance with paragraph (2) of this subsection.

(4) A facility is not required to continue to allow a resident to use a self-release seat belt in accordance with paragraph (2) of this subsection if:

(A) the resident cannot consistently demonstrate the ability to fasten and release the seat belt without assistance;

(B) the use of the self-release seat belt does not comply with the resident's individual service plan; or

(C) the resident or the resident's legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.

§553.281. Health Maintenance Activities.

(a) A facility may allow an attendant to perform a health maintenance activity (HMA) for a resident if:

(1) the activity is performed for a resident with a functional disability as defined in §553.3 of this chapter (relating to Definitions); and

(2) an RN acting on behalf of the facility has conducted and documented an assessment of the resident's health status and all other relevant factors in accordance with Texas Administrative Code, Title 22 §225.6 (relating to RN Assessment of the Client) and 22 TAC §225.8(a)(2) (relating to Health Maintenance Activities Not Requiring Delegation).

(3) The facility must ensure that:

(A) the resident, the resident's legally authorized representative, or other adult chosen by the resident, as applicable, is able and agrees in writing to direct an attendant to perform the task without RN supervision;

(B) the activity addresses a condition that is stable and predictable, as defined in §553.3 of this chapter; and

(C) the activity is performed for a resident who could perform the task on his or her own but for a functional disability that prevents it.

(b) The RN must reassess a resident's status any time there is a change in the resident's condition that may affect his or her physical or cognitive abilities, or the stability or predictability of the resident's condition and, at a minimum:

(1) at least once annually; or

(2) at least once every six months if the resident has been diagnosed with Alzheimer's disease or a related disorder or resides in an Alzheimer's certified facility or unit.

§553.283. RN Delegation of Care Tasks.

If the RN determines under §553.281 of this subchapter (relating to Health Maintenance Activities) that an activity does not qualify as a health maintenance activity, an attendant may perform that activity for the resident if:

(1) the RN has determined in accordance with Texas Administrative Code (TAC), Title 22, Chapter 225 (relating to RN Delegation to Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions) that:

(A) the activity can be delegated to an attendant; and

(B) the activity is allowable in an assisted living facility in accordance with §553.7 of this chapter (relating to Assisted Living Facility Services); and

(2) the RN has properly delegated the task to an attendant in accordance with 22 TAC Chapter 225.

§553.285. Resident Records and Retention.

(a) Resident records.

(1) Records that pertain to a resident must be treated as confidential and properly safeguarded from unauthorized use, loss, and destruction. A resident record is any record pertaining to the resident by name or other unique identifier.

(2) Resident records must be retained for five years after services end.

(3) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's evaluations, any RN assessments related to health maintenance activities or RN delegated tasks, and counseling related to self-administration of medication;

(C) the resident's service plan;

(D) physician's orders, if any;

(E) advance directives, if any;

(F) medication administration records, if the facility provides medication administration or supervision to the resident;

(G) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless:

(i) a transferring facility has a physical examination in the medical record; or

(ii) the resident is a Christian Scientist;

(H) documentation of services provided by health care professionals applicable to the resident's medical needs; and

(I) a copy of the most recent court order appointing a guardian of a resident or a resident's estate and letters of guardianship that the facility received in response to the request made in accordance with subsection (c) of this section.

(b) Resident charges and finances.

(1) The facility must keep a financial record on all charges billed to the resident for care and these records must be available to HHSC. A financial record must be made available to a resident upon request.

(A) If a resident entrusts the handling of any personal finances to the facility, the facility must maintain a financial record to document accountability for receipts and expenditures, and these records must be available to HHSC.

(B) Receipts for payments from a resident or on behalf of a resident must be made available within two working days of the date requested.

(2) A facility must give residents 30 days' written notice before implementing a price increase for anything for which residents are charged.

(c) Guardianship record requirements.

(1) A facility must request, from a resident's legally authorized representative or responsible party, a copy of:

(A) the current court order appointing a guardian for the resident or the resident's estate; and

(B) current letters of guardianship for the resident.

(2) A facility must request the court order and letters of guardianship when the facility:

(A) admits an individual; and

(B) becomes aware a guardian is appointed after the facility admits a resident.

(3) A facility must request an updated copy of the court order and letters of guardianship at each annual evaluation and retain documentation of any change.

(4) A facility must make at least one follow-up request within 30 days after the facility makes a request in accordance with paragraphs (2) or (3) of this subsection if the facility has not received:

(A) a copy of the court order and letters of guardianship; or

(B) a response that there is no court order or letters of guardianship.

(5) A facility must keep in the resident's record:

(A) documentation of the results of the request for the court order and letters of guardianship; and

(B) a copy of the court order and letters of guardianship.

(d) Release of resident records.

(1) A resident's records must be available to the resident, the resident's legally authorized representative, and HHSC staff.

(2) A resident's records must only be released with the resident's written consent, except:

(A) to another provider, if the resident transfers residency;

(B) if the release is required by law; and

(C) to HHSC staff during surveys.

(3) The facility must provide a resident or, if applicable, the resident's legally authorized representative with a hard or electronic copy of all or any portion of the resident's records within two working days of the date of written or spoken request.

(e) Destruction of Records.

(1) When resident records are destroyed after the retention period, the facility must shred or incinerate the records in a manner that protects confidentiality.

(2) At the time of destruction, the facility must document in a log the following for each record destroyed:

(A) resident name;

(B) resident record number, if used;

(C) the resident's Social Security number and date of birth, if available; and

(D) date and signature of the person carrying out destruction.

§553.287. Rights.

(a) Residents' rights.

(1) A facility must ensure that the facility's policies and procedures:

(A) enable residents to exercise their rights;

(B) promote the highest practicable quality of life for all residents and do not deliberately or inadvertently prohibit a resident from exercising the rights stated in this section or by the rights of citizenship; and

(C) ensure that a resident, in exercising his or her rights, does not impede the rights of others in the facility.

(2) A facility must ensure the Residents' Bill of Rights is:

(A) provided in writing to each resident or resident's legally authorized representative; and

(B) posted in English and Spanish in a prominent place in the facility accessible by residents and visitors.

(3) A resident has all the rights, benefits, responsibilities, and privileges stated in the Constitution and laws of this state and the United States, except where lawfully restricted.

(4) A resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(5) A resident has the right to be free from physical and mental abuse, including corporal punishment, physical restraints and seclusion, and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident's medical symptoms.

(6) A resident has the right to participate in activities of social, religious, and community groups unless the participation interferes with the rights of others.

(7) A resident has the right to practice the religion of the resident's choice or abstain from religious activities.

(8) A resident with an intellectual disability and who is represented by a court-appointed guardian may participate in a behavior modification program that involves the use of restraints, in accordance with §553.279(a) of this subchapter (relating to Restraints and Seclusion), or adverse stimuli only with the informed consent of the guardian.

(9) A resident has the right to be treated with respect, courtesy, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the resident has the right to:

(A) make individualized choices regarding personal affairs, care, benefits, schedules and activities, and services;

(B) be free from abuse, neglect, and exploitation;

(C) if protective measures are required and the resident has not been adjudicated cognitively impaired, designate a guardian or legally authorized representative to ensure the right to quality stewardship of the resident's affairs; and

(D) protection of the resident's personal image. A facility employee must not share or post to the internet or social media any photographs or video of a resident without the resident's or the resident's legally authorized representative's written consent.

(10) A resident has the right to a safe, clean, and decent living environment that:

(A) provides adequate personal space and privacy;

(B) is free of pests;

(C) is free of electrical and structural hazards;

(D) has clean bathrooms, kitchen, and bedrooms; and

(E) has clean linens and towels.

(11) A resident has the right to communicate with staff and others in the resident's native language for the purpose of acquiring or providing any type of treatment, care, or services.

(12) A resident has the right to make a complaint about the resident's care or treatment.

(A) A resident's complaint may be made anonymously or communicated by a person designated by the resident.

(B) The facility must promptly respond to resolve each resident complaint.

(C) The facility must not discriminate or take other punitive action against a resident who makes a complaint.

(D) The facility must not impede a resident's right to make a formal complaint to HHSC or require that complaints be made to the facility prior to lodging a formal complaint with HHSC.

(E) The facility must not impede resident access to the State Ombudsman, a certified ombudsman, or an ombudsman intern or require that complaints be made to the facility prior to making a complaint to the Ombudsman Program but may inform the resident of the role of the Ombudsman Program to help resolve complaints.

(13) A resident has the right to receive and send unopened mail. If mail is not directly delivered to residents by a postal worker, the facility must ensure that the resident's:

(A) outgoing mail is posted via the carrier of the resident's choice; and

(B) incoming mail and packages are delivered to the resident within 24 hours of delivery at the facility.

(14) A resident has the right to unrestricted direct, unaccompanied communication in person and via telecommunications, including personal visitation with any person of the resident's choice, including family members, outside resources, and representatives of advocacy groups and community service organizations, at any reasonable hour or in case of emergency or personal crisis, at no monetary cost to the resident or visitor.

(A) A resident has the right to retain a personal cellular or Internet device, such as a cellphone, computer, and tablet.

(B) The facility must ensure a resident is given:

(i) personal privacy while attending to personal needs; and

(ii) a private place for receiving visitors or associating with other residents via communication devices or in person.

(C) The facility must ensure a resident's right to privacy includes any medical treatment, written communications, telephone conversations, meeting with visitors, and access to resident councils.

(15) A resident has the right to make unimpeded contacts and cultivate relationships with individual community members and social groups to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable.

(16) A resident has the right to manage his or her own financial affairs.

(A) The resident may authorize in writing another person to manage his or her money.

(B) The resident may choose the way his or her money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the resident may choose the least restrictive of these methods.

(C) The resident must be given, upon request of the resident or the resident's legally authorized representative, but at least quarterly, an accounting of financial transactions made on his or her behalf by the facility should the facility accept the resident's written delegation of this responsibility to the facility in conformance with state law.

(17) A resident has the right to review and obtain copies of the resident's records in accordance with §553.285 of this subchapter (relating to Resident Records and Retention).

(18) A resident has the right to choose and retain:

(A) an attending physician and other medical and health care practitioners; and

(B) at least one essential caregiver, in accordance with Chapter 570 of this title (relating to Long-term Care Provider Rules During a Public Health Emergency or Disaster).

(19) A resident has the right to be fully informed in advance about treatment, care, and services provided by the facility.

(20) A resident has the right to participate in developing his or her individual service plan that describes the resident's medical, nursing, and psychological needs and how the needs will be met.

(21) A resident has the right to refuse medical treatment or services. The facility must ensure the resident is advised by the

person providing treatment or services of the possible consequences of refusing treatment or services.

(22) A resident has the right to request a shared room with a spouse or other consenting individual who resides in the facility.

(23) A resident has the right to retain and use personal possessions, including clothing and furnishings, as space permits and with consideration of the health and safety of other residents.

(24) A resident has the right to determine his or her dress, hair style, and other personal effects according to individual preference.

(25) A resident has the right to retain and use personal property and belongings, such as photographs, mementos, and memorabilia, and food and snacks in properly sealed and resealable containers.

(26) A resident has the right to refuse to perform services for the facility, except as contracted for by the resident and manager.

(27) A resident has the right to be informed by the facility, no later than the 30th day after admission:

(A) whether the resident is entitled to benefits under Medicare or Medicaid related to the services provided by the facility; and

(B) which items and services may be covered by these benefits, including items or services for which the resident may not be charged.

(28) A resident has the right to not be transferred or discharged without notice or due process in accordance with §553.263 of this subchapter (relating to Resident Transfer and Discharge).

(29) A resident has the right to have access to the State Ombudsman and a certified ombudsman.

(30) A resident has the right to execute an advance directive, under Texas Health and Safety Code, Chapter 166, or designate an agent in advance of need to make decisions regarding the resident's health care should the resident become incapacitated.

(b) Provider rights.

(1) A facility must post a Providers' Bill of Rights in a prominent place in the facility in both English and Spanish.

(2) A provider of assisted living services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and the facility;

(B) terminate a resident's contract for just cause after a written 30-day notice or immediately in accordance with §553.263 of this subchapter (relating to Resident Transfer and Discharge);

(C) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(D) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(E) contract with members of the local community in order to achieve the highest level of independence, autonomy, interaction, and services to residents;

(F) access information and medical records concerning a resident referred to the facility, which must remain confidential as provided by law;

(G) refuse a person referred to the facility if the referral is inappropriate;

(H) maintain an environment free of illegal drugs and weapons per Texas Penal Code §§30.05 - 30.07, which allows a facility to ban firearms in the facility by giving proper notice by way of a sign at all entrances; and

(I) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

(c) Resident and family councils.

(1) A facility must have a policy that allows residents and families to form and participate in resident and family council meetings and activities.

(2) A facility must not prohibit residents from attending resident and family council meetings.

(3) A facility must assist a resident to attend a family council meeting in the facility if requested by the resident.

(4) A facility must not use resident or family council meetings and activities in place of facility activities required in §553.273 of this subchapter (relating to Activities Program).

(d) HHSC and local authority access to residents. A facility must allow an employee of HHSC, or an employee of a local authority, into the facility as necessary to provide services to a resident:

(1) during the provision of emergency and medical services; and

(2) during a facility survey, inspection or investigation, or enforcement action.

(e) Authorized electronic monitoring (AEM).

(1) A facility must permit a resident, or the resident's guardian or legally authorized representative, to monitor the resident's room using an electronic monitoring device.

(2) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.

(3) The HHSC Information Regarding an Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents. A copy of the form must be maintained in the active portion of a resident's record.
Figure: 26 TAC §553.287(e)(3)

(4) A resident, or the resident's guardian or legally authorized representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated HHSC Request for Authorized Electronic Monitoring form to the manager or designee. A copy of the form must be maintained in the resident's record.

(A) If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.

(B) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

(C) If a resident does not have the capacity to request AEM but has not been judicially declared to lack the required capacity, only the legally authorized representative of the resident may request AEM.

(i) A resident's practitioner makes the determination regarding the resident's capacity to request AEM. Documentation of the determination must be in the resident's record.

(ii) When a resident's practitioner determines the resident lacks the capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legally authorized representative for the limited purpose of requesting AEM:

(I) a person named in the resident's medical power of attorney or other advance directive;

(II) the resident's spouse;

(III) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(IV) a majority of the resident's reasonably available adult children;

(V) the resident's parents; or

(VI) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(5) A resident, or the resident's guardian or legally authorized representative, who wishes to conduct AEM must also obtain the consent of any other residents residing in the room using the HHSC Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the manager or designee. A copy of the form must be maintained in the active portion of the resident's record. AEM cannot be conducted without the consent of all residents residing in the room.

(A) Consent to AEM may be given only by:

(i) the other resident or residents in the room;

(ii) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or

(iii) the legally authorized representative of the other resident, determined by following the same procedure established under paragraph (4)(C) of this subsection.

(B) Another resident residing in the room may condition consent on:

(i) pointing the camera away from the consenting resident's bed and personal space, when the proposed electronic monitoring is a video surveillance camera; and

(ii) limiting or prohibiting the use of an electronic monitoring device.

(C) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident residing in the room. The resident's roommate, or the roommate's guardian or legally authorized representative, assumes responsibility for ensuring AEM is conducted according to the designated limitations.

(D) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legally authorized representative, consents.

(6) When the completed HHSC Request for Authorized Electronic Monitoring form and the HHSC Consent to Authorized Electronic Monitoring form, if applicable, have been given to the manager or designee, AEM may begin.

(A) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(B) The resident, or the resident's guardian or legally authorized representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

(C) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(D) The facility must make reasonable physical accommodation for AEM, which includes providing:

(i) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(ii) access to power sources for the video surveillance camera or other electronic monitoring device.

(7) A facility must, regardless of whether AEM is being conducted, post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(8) A facility may:

(A) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meet all local and state regulations;

(B) require AEM to be conducted in plain view; and

(C) place a resident in a different room to accommodate a request for AEM.

(9) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §553.3 of this chapter (relating to Definitions), the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(10) All instances of abuse or neglect must be reported to HHSC, as required by §553.293 of this subchapter (relating to Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities). For purposes of the duty to report abuse or neglect, the following apply.

(A) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a recording made by the electronic monitoring device on or before the 14th day after the date the recording is made.

(B) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring gives a recording made by the electronic monitoring device to a person and directs the person to view or listen to the recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the recording is considered to have viewed or listened to the recording on or before the seventh day after the date the person receives the recording.

(C) A person is required to report abuse based on the person's viewing of or listening to a recording only if the incident of

abuse is acquired on the recording. A person is required to report neglect based on the person's viewing of or listening to a recording only if it is clear from viewing or listening to the recording that neglect has occurred.

(D) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant recording made by an electronic monitoring device, the person who possesses the recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard. If the contents of the recording are transferred from the original technological format, a qualified professional must do the transfer.

(E) A person who sends more than one recording to HHSC must identify each recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the recording that an incident of abuse or evidence of neglect may be found.

§553.289. Access to Residents and Records by the State Long-Term Care Ombudsman Program.

(a) A resident has the right to be visited by the State Ombudsman, a certified ombudsman, or an ombudsman intern.

(b) In accordance with 42 United States Code (U.S. Code) §3058g (b)(1)(A) and 45 CFR §1324.11(e)(2), a facility must allow:

(1) the State Ombudsman, a certified ombudsman, and an ombudsman intern to have:

(A) immediate, private, and unimpeded access to enter the facility at any time during the facility's regular business hours or regular visiting hours;

(B) immediate, private, and unimpeded access to a resident; and

(C) immediate and unimpeded access to the name and contact information of the resident's legally authorized representative, if the State Ombudsman, a certified ombudsman, or an ombudsman intern determines the information is needed to perform a function of the Ombudsman Program; and

(2) the State Ombudsman and a certified ombudsman to have immediate, private, and unimpeded access to enter the facility at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated.

(c) A facility, in accordance with 42 U.S. Code §3058g (b)(1)(B) and 45 CFR §1324.11(e)(2), must allow the State Ombudsman and a certified ombudsman to have immediate access to:

(1) all files, records, and other information concerning a resident, including an incident report involving the resident, if:

(A) the State Ombudsman or certified ombudsman has the consent of the resident or legally authorized representative;

(B) the resident is unable to communicate consent to access and has no legally authorized representative; or

(C) such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access to the records, files, and other information;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the records, files, or other information, the certified ombudsman obtains the approval of the State Ombudsman to access the records, files, or other information without the legally authorized representative's consent; and

(2) the administrative records, policies, and documents of the facility to which the residents or general public have access.

(d) The rules adopted under the Health Insurance Portability and Accountability Act of 1996, 45 CFR part 164, subparts A and E, do not preclude a facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (b)(1)(C) and (c)(1) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

§553.291. Postings.

(a) A facility must prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) an Alzheimer's certificate if the facility is Alzheimer's certified or has an Alzheimer's certified unit;

(3) a sign prescribed by HHSC that specifies complaint procedures established under these rules and specifies how complaints may be filed with HHSC;

(4) a notice in the form prescribed by HHSC stating that inspection and related reports are available at the facility for public inspection and providing HHSC toll-free telephone number that may be used to obtain information concerning the facility;

(5) a copy of the most recent inspection report relating to the facility;

(6) Residents' Bill of Rights;

(7) Providers' Bill of Rights;

(8) the facility's emergency evacuation floor plan, unless the facility is a one-story facility licensed for fewer than 17 residents;

(9) the menu for resident daily meals and snacks for the current week;

(10) the resident daily activities schedule for the current month;

(11) the telephone number of the managing local ombudsman and the toll-free number of the Ombudsman Program, 1-800-252-2412;

(12) the facility's 24-hour staffing pattern for the current month; and

(13) a sign stating: "Cases of Suspected Abuse, Neglect, or Exploitation must be reported to HHSC by calling 1-800-458-9858."

(b) A facility must post emergency telephone numbers, including for fire, police, emergency medical services, and poison control center services, conspicuously at or near facility maintained telephones.

(c) A facility must, regardless of whether authorized electronic monitoring is being conducted, post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of

some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(d) Whenever a resident room is being electronically monitored, the facility must post and maintain a conspicuous notice at the entrance to the resident's room, stating that an electronic monitoring device is monitoring the room.

§553.292. Advertisements, Solicitations, and Promotional Material.

A facility must use its state-issued facility identification number in all advertisements, solicitations, and promotional materials, including the facility's website, social media accounts, yellow pages, brochures, and business cards.

§553.293. Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities.

(a) An employee of the facility who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation or that the resident has died due to abuse or neglect, exploitation, or an unknown reason, must report the abuse, neglect, or exploitation to:

(1) HHSC Consumer Rights and Services section at 1-800-458-9858, via the online portal, or via the HHSC website; and

(2) the applicable law enforcement agency described in this paragraph:

(A) a municipal law enforcement agency, if the facility is located within the territorial boundaries of a municipality; or

(B) the sheriff's department of the county in which the facility is located if the facility is not located within the territorial boundaries of a municipality.

(b) A facility must develop and implement policies regarding abuse, neglect, and exploitation and incidents that facilities must report to HHSC such as a missing resident, drug diversion, or the injury or death of a resident from an unknown source. Such policies must address the following:

(1) prevention of abuse, neglect, and exploitation including the prevention of additional abuse, neglect, and exploitation during an active investigation;

(2) identification of abuse, neglect, exploitation, or reportable incident in accordance with this subsection;

(3) reporting of abuse, neglect, exploitation, or incident, as described in this subsection, including timeframes for reporting internally and to HHSC, the Texas Department of Family and Protective Services, or law enforcement;

(4) notifications to applicable individuals, such as a resident's legally authorized representative, regarding the initiation and conclusion of an investigation for abuse, neglect, exploitation, or reportable incident; and

(5) investigation procedures, required documentation, and internal reporting chain of command.

(c) The following information must be reported to HHSC:

(1) name, age, and address of the resident;

(2) name and address of the person responsible for the care of the resident, if available;

(3) nature and extent of the elderly or disabled person's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(d) A facility must immediately, no later than 24 hours upon learning of an incident or receiving a complaint, make an oral report to HHSC or electronic report via the online portal of:

(1) alleged abuse, neglect, or exploitation;

(2) a missing resident;

(3) drug diversion;

(4) fire;

(5) a resident's injury or death from an unknown source; or

(6) a resident's credible verbal threats or physical actions that pose a serious or immediate threat to the health, safety, or welfare of staff or other residents.

(e) A facility must thoroughly investigate an incident, as described in subsection (d) of this section, by collecting evidence such as interviews and documents to allow the individual assigned to oversee investigations to determine what actions are necessary for the protection of residents.

(f) A facility must submit a report of the investigation on Form 3613A, SNF, NF, ICF/IID, ALF, DAHS including ISS providers and PPECC Provider Investigation Report with Cover Sheet, to HHSC state office no later than the fifth calendar day after the oral report.

(g) A facility must prevent further potential abuse, neglect, exploitation, or mistreatment of residents while an investigation is in progress, which may include immediate suspension of any alleged perpetrators employed by the facility.

(h) A facility must not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the facility.

(i) A facility must require staff, as a condition of employment with the facility, to sign a statement indicating that the employee may be criminally liable for a failure to report abuse, neglect, exploitation, or reportable incident, in accordance with this section.

§553.295. Emergency Preparedness and Response.

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

(1) Designated emergency contact--A person whom a resident, or a resident's legally authorized representative, identifies in writing for the facility to contact in the event of a disaster or emergency.

(2) Disaster or emergency--An impending, emerging, or current situation that:

(A) interferes with normal activities of a facility and its residents;

(B) may:

(i) cause injury or death to a resident or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) except as it relates to an epidemic or pandemic, or to the extent it is incident to another disaster or emergency, does not include a situation that arises from the medical condition of a resident, such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(3) Emergency management coordinator (EMC)--The person appointed by the local mayor or county judge to plan, coordinate,

and implement public health emergency preparedness planning and response within the local jurisdiction.

(4) Emergency preparedness coordinator (EPC)--The facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency.

(5) Evacuation summary--A current summary of the facility's emergency preparedness and response plan that includes:

(A) the name, address, and contact information for each receiving facility or pre-arranged evacuation destination identified by the facility under subsection (g)(3)(B) of this section;

(B) the procedure for safely transporting residents and any other individuals evacuating a facility;

(C) the name or title, and contact information of the facility staff member to contact for evacuation information;

(D) the facility's primary mode of communication to be used during a disaster or emergency and the facility's supplemental or alternate mode of communication;

(E) the facility's procedure for notifying persons referenced in subsection (g)(5) of this section as soon as practicable about facility actions affecting residents during a disaster or emergency, including an impending or actual evacuation, and for maintaining ongoing communication with them for the duration of the disaster, emergency, or evacuation;

(F) a statement about training that is available to a resident, the resident's legally authorized representative, and each designated emergency contact for the resident, on procedures under the facility's plan that involve or impact each of them, respectively; and

(G) the facility's procedures for when a resident evacuates with a person other than a facility staff member.

(6) Plan--A facility's emergency preparedness and response plan.

(7) Receiving facility--A separate licensed assisted living facility:

(A) from which the facility has documented acknowledgement, from an identified authorized representative, as described in subsection (i)(2)(C) of this section; and

(B) to which the facility has arranged in advance of a disaster or emergency to evacuate some or all of the facility's residents, on a temporary basis, due to a disaster or emergency if, at the time of evacuation:

(i) the receiving facility can safely receive and accommodate the residents; and

(ii) the receiving facility has any necessary licensure or emergency authorization required to do so.

(8) Risk assessment--The process of evaluating, documenting, and examining potential disasters or emergencies that pose the highest risk to the facility, and assessing their foreseeable impacts, based on the facility's geographical location, structural conditions, resident needs and characteristics, and other influencing factors, in order to develop an effective emergency preparedness and response plan.

(b) A facility must conduct and document a risk assessment that meets the definition in subsection (a)(8) of this section for potential internal and external emergencies or disasters relevant to the facility's operations and location, and that pose the highest risk to a facility, such as:

(1) a fire or explosion;

(2) a power, telecommunication, or water outage; contamination of a water source; or significant interruption in the normal supply of any essential, such as food or water;

(3) a wildfire;

(4) a hazardous materials accident;

(5) an active or threatened terrorist or shooter, a detonated bomb or bomb threat, or a suspicious object or substance;

(6) a flood or a mudslide;

(7) a hurricane or other severe weather conditions;

(8) an epidemic or pandemic;

(9) a cyberattack; and

(10) a loss of all or a portion of the facility.

(c) A facility must develop and maintain a written emergency preparedness and response plan based on its risk assessment under subsection (b) of this section that is adequate to protect facility residents and staff in a disaster or emergency.

(1) The plan must address the eight core functions of emergency management, which are:

(A) direction and control;

(B) warning;

(C) communication;

(D) sheltering arrangements;

(E) evacuation;

(F) transportation;

(G) health and medical needs; and

(H) resource management.

(2) A facility must prepare for a disaster or emergency based on its plan and follow each plan procedure and requirement, including contingency procedures, at the time it is called for in the event of a disaster or emergency. In addition to meeting the other requirements of this section, the emergency preparedness plan must:

(A) document the contact information for the EMC for the area, as identified by the office of the local mayor or county judge;

(B) include a process to communicate with the EMC, both as a preparedness measure and in anticipation of and during a developing and occurring disaster or emergency; and

(C) include the location of a current list of the facility's resident population, which must be maintained as required under subsection (g)(3) of this section, that identifies:

(i) residents with Alzheimer's disease or related disorders;

(ii) residents who have an evacuation waiver approved under §553.261 of this subchapter (relating to Inappropriate Placement in a Type A or Type B Facility); and

(iii) residents with mobility limitations or other special needs who may need specialized assistance, either at the facility or in case of evacuation.

(3) A facility must notify the EMC of the facility's emergency preparedness and response plan, take actions to coordinate its

planning and emergency response with the EMC, and document communications with the EMC regarding plan coordination.

(d) A facility must:

(1) maintain a current printed copy of the plan in a central location that is accessible to all staff, residents, and residents' legally authorized representatives at all times;

(2) at least annually and after an event described in subparagraphs (A) - (D) of this paragraph, review the plan, its evacuation summary, if any, and the contact lists described in subsection (g)(3) of this section, and update each:

(A) to reflect changes in information, including when an evacuation waiver is approved under §553.261 of this subchapter;

(B) within 30 days or as soon as practicable following:

(i) a disaster or emergency if a shortcoming identified in the plan during the facility's response;

(ii) a drill if, based on the drill, a shortcoming in the plan is identified; and

(iii) a change in a facility policy or HHSC rule that would impact the plan;

(3) document reviews and updates conducted under paragraph (2) of this subsection, including the date of each review and dated documentation of changes made to the plan based on a review;

(4) provide residents and the residents' legally authorized representatives with a written copy of the plan or an evacuation summary, as defined in subsection (a)(5) of this section, upon admission, on request, and when the facility makes a significant change to a copy of the plan or evacuation summary it has provided to a resident or a resident's legally authorized representative;

(5) provide the information described in subsection (a)(5)(A) of this section to a resident or legally authorized representative who requests that information;

(6) notify each resident, next of kin, or legally authorized representative, in writing, how to register for evacuation assistance with the Texas Information and Referral Network (2-1-1 Texas); and

(7) register as a provider with 2-1-1 Texas to assist the state in identifying persons who may need assistance in a disaster or emergency. In doing so, the facility is not required to identify or register individual residents for evacuation assistance.

(e) Core Function One: Direction and Control. The facility's plan must contain a section for direction and control that:

(1) designates the EPC, as defined in (a)(4) of this section, and an alternate EPC, who is the facility staff person with the responsibility and authority to act as the EPC if the EPC is unable to serve in that capacity; and

(2) assigns responsibilities to staff members by designated function or position and describes the facility's system for ensuring that each staff member clearly understands the staff member's own role and how to execute it, in the event of a disaster or emergency.

(f) Core Function Two: Warning. A facility's plan must contain a section for warning that identifies:

(1) applicable procedures, methods, and responsibility for the facility to communicate with the EMC and other outside organizations, based on facility coordination with them, to notify the EPC or alternate EPC, as applicable, of a disaster or emergency;

(2) who, including during off hours, weekends, and holidays, the EPC or alternate EPC, as applicable, will notify of a disaster or emergency, and the methods and procedures for notification;

(3) the facility's procedure for keeping all persons present in the facility informed of the facility's present plan for responding to a potential or current disaster or emergency impacting or threatening the area where the facility is located; and

(4) procedures for monitoring local news and weather reports regarding a disaster or potential disaster or emergency, taking into consideration factors such as:

(A) location-specific natural disasters;

(B) whether a disaster is likely to be addressed or forecast in the reports; and

(C) the conditions, natural or otherwise, under which designated staff become responsible for monitoring news and weather reports for a disaster or emergency.

(g) Core Function Three: Communication. A facility's plan must contain a section for communication that:

(1) identifies the facility's primary mode of communication to be used during an emergency and the facility's supplemental or alternate mode of communication, and procedures for communication if telecommunication is affected by a disaster or emergency;

(2) includes instructions on when to call 911;

(3) includes the location of a list of current contact information, where it is easily accessible to staff, for each of the following:

(A) the legally authorized representative and designated emergency contacts for each resident;

(B) each receiving facility and pre-arranged evacuation destination, including alternate pre-arrangements, together with the written acknowledgement for each, as defined in subsection (a)(7) of this section;

(C) home and community support services agencies and independent health care professionals that deliver health care services to residents in the facility;

(D) personal contact information for facility staff; and

(E) the facility's resident population, which must identify residents who may need specialized assistance at the facility or in case of evacuation, as described in subsection (c)(2)(C) of this section;

(4) provides a method for the facility to communicate information to the public about its status during an emergency; and

(5) describes the facility's procedure for notifying at least the following persons, as applicable and as soon as practicable, about facility actions affecting residents during an emergency, including an impending or actual evacuation, and for maintaining ongoing communication for the duration of the emergency or evacuation:

(A) all facility staff members, including off-duty staff;

(B) each facility resident;

(C) any legally authorized representative of a resident;

(D) each resident's designated emergency contacts;

(E) each home and community support services agency or independent health care professional that delivers health care services to a facility resident;

(F) each receiving facility or evacuation destination to be used, if there is an impending or actual evacuation;

(G) the driver of a vehicle transporting residents or staff, medication, records, food, water, equipment, or supplies during an evacuation, and the employer of a driver who is not a facility staff person: and

(H) the EMC.

(h) Core Function Four: Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

(1) describes the procedure for making and implementing a decision to remain in the facility during a disaster or emergency, that includes:

(A) the arrangements, staff responsibilities, and procedures for accessing and obtaining medication, records, equipment and supplies, water and food, including food to accommodate an individual who has a medical need for a special diet;

(B) facility arrangements and procedures for providing, in areas used by residents during a disaster or emergency, power and ambient temperatures that are safe under the circumstances, but which may not be less than 68 degrees Fahrenheit or more than 82 degrees Fahrenheit; and

(C) if necessary, sheltering facility staff or emergency staff involved in responding to an emergency and, as necessary and appropriate, their family members; and

(2) includes a procedure for notifying HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, decides to remain in the facility during a disaster or emergency.

(i) Core Function Five: Evacuation.

(1) A facility has the discretion to determine when an evacuation is necessary for the health and safety of residents and staff. However, a facility must evacuate if the county judge of the county in which the facility is located or the mayor of the municipality in which the facility is located mandates it by an evacuation order issued independently or concurrently with the governor.

(2) A facility's plan must contain a section for evacuation that:

(A) identifies evacuation destinations and routes, including at least each pre-arranged evacuation destination and receiving facility described in subparagraph (C) of this paragraph, and includes a map that shows each identified destination and route;

(B) describes the procedure for making and implementing a decision to evacuate some or all residents to one or more receiving facilities or pre-arranged evacuation destinations, with contingency procedures, and a plan for any pets or service animals that reside in the facility;

(C) describes the process for the facility to notify each applicable receiving facility or pre-arranged destination of the facility's plan to evacuate and to verify with the applicable destination that it is available, ready, and not legally restricted at the time from receiving the evacuated residents, and can do so safely;

(D) includes the procedure and the staff responsible for:

(i) notifying HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to evacuate, or as soon as feasible thereafter, if it is not safe to do so at the time of decision;

(ii) ensuring that sufficient facility staff with qualifications necessary to meet resident needs accompany evacuating residents to the receiving facility, pre-arranged evacuation destination, or other destination to which the facility evacuates, and remain with the residents, providing any necessary care, for the duration of the residents' stay in the receiving facility or other destination to which the facility evacuates;

(iii) ensuring that residents and facility staff present in the building have been evacuated;

(iv) accounting for and tracking the location of residents, facility staff, and transport vehicles involved in the facility evacuation, both during and after the facility evacuation, through the time the residents and facility staff return to the evacuated facility;

(v) accounting for residents absent from the facility at the time of the evacuation and residents who evacuate on their own or with a third party, and notifying them that the facility has been evacuated;

(vi) overseeing the release of resident information to authorized persons in an emergency to promote continuity of a resident's care;

(vii) contacting the EMC to find out if it is safe to return to the geographical area after an evacuation;

(viii) making or obtaining, as appropriate, a comprehensive determination whether and when it is safe to re-enter and occupy the facility after an evacuation;

(ix) returning evacuated residents to the facility and notifying persons listed in subsection (g)(5) of this section who were not involved in the return of the residents; and

(x) notifying the HHSC Regulatory Services regional office for the area in which the facility is located immediately after each instance when some or all residents have returned to the facility after an evacuation.

(j) Core Function Six: Transportation. A facility's plan must contain a section for transportation that:

(1) identifies:

(A) current arrangements for access to a sufficient number of vehicles to safely evacuate all residents;

(B) facility staff designated during an evacuation to drive a vehicle owned, leased, or rented by the facility;

(C) notification procedures to ensure designated staff's availability at the time of an evacuation; and

(D) methods for maintaining communication with vehicles, staff, and drivers transporting facility residents or staff during evacuation, in accordance with subsection (g)(5)(A) and (G) of this section;

(2) includes procedures for safely transporting residents, facility staff, and any other individuals evacuating a facility; and

(3) includes procedures for the safe and secure transport of, and staff's timely access to, the following resident items needed during an evacuation: oxygen, medications, records, food, water, equipment, and supplies.

(k) Core Function Seven: Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(1) identifies special services that residents use, such as dialysis, oxygen, or hospice services;

(2) identifies procedures to enable each resident, notwithstanding an emergency, to continue to receive from the appropriate provider the services identified under paragraph (1) of this subsection; and

(3) identifies procedures for the facility to notify home and community support services agencies and independent health care professionals that deliver services to residents in the facility of an evacuation in accordance with subsection (g)(5)(E) of this section.

(l) Core Function Eight: Resource Management. A facility's plan must contain a section for resource management that:

(1) identifies a plan for identifying, obtaining, transporting, and storing medications, records, food, water, equipment, and supplies needed for both residents and evacuating staff during an emergency;

(2) identifies facility staff, by position or function, who are assigned to access or obtain the items under paragraph (1) of this subsection and other necessary resources, and ensures their delivery to the facility, as needed, or their transport in the event of an evacuation;

(3) describes the procedure to ensure medications are secure and maintained at the proper temperature throughout an emergency; and

(4) describes procedures and safeguards to protect the confidentiality, security, and integrity of resident records throughout an emergency and any evacuation of residents.

(m) Receiving Facility. To act as a receiving facility, as defined in paragraph (a)(7) of this section, a facility's plan must include procedures for accommodating a temporary emergency placement of one or more residents from another assisted living facility, only in an emergency and only if:

(1) the facility does not exceed its licensed capacity, unless pre-approved in writing by HHSC and the excess is not more than 10 percent of the facility's licensed capacity;

(2) the facility ensures that the temporary emergency placement of one or more residents evacuated from another assisted living facility does not compromise the health or safety of any evacuated or facility resident, facility staff, or any other individual;

(3) the facility is able to meet the needs of all evacuated residents and any other persons it receives on a temporary emergency basis while continuing to meet the needs of its own residents, and of any of its own staff or other individuals it is sheltering at the facility during an emergency, in accordance with its plan under subsection (h) of this section;

(4) the facility maintains a log of each additional individual being housed in the facility that includes the individual's name, address, and the date of arrival and departure; and

(5) the receiving facility ensures that each temporarily placed resident has at arrival, or as soon after arrival as practicable and no later than necessary to protect the health of the resident, each of the following necessary to the resident's continuity of care:

(A) necessary practitioner's orders for care;

(B) medications;

(C) a service plan;

(D) existing advance directives; and

(E) contact information for each legally authorized representative and designated emergency contact of an evacuated resident, and a record of any notifications that have already occurred.

(n) Emergency preparedness and response plan training. The facility must:

(1) provide staff training on the emergency preparedness plan at least annually;

(2) train a facility staff member on the staff member's responsibilities under the plan:

(A) prior to the staff member assuming job responsibilities; and

(B) when a staff member's responsibilities under the plan change;

(3) conduct at least one unannounced annual drill with facility staff for severe weather or another emergency identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (b) of this section;

(4) offer training and document, for each, the provision or refusal of such training, to each resident or legally authorized representative, if any, and each designated emergency contact, on procedures under the facility's plan that involve or impact each of them, respectively; and

(5) document the facility's compliance with each paragraph of this subsection at the time it is completed.

(o) Self-reported incidents relating to a disaster or emergency.

(1) A facility must report a fire to HHSC as follows:

(A) by calling 1-800-458-9858 immediately after the fire or as soon as practicable during an extended fire; and

(B) by submitting a completed HHSC Form 3707, Fire Report for Long Term Care Facilities within 15 calendar days after the fire.

(2) A facility must report to HHSC a death or serious injury of a resident, or threat to resident health or safety, resulting from an emergency or disaster as follows:

(A) by calling 1-800-458-9858 immediately after the incident, or, if the incident is of extended duration, as soon as practicable after the injury, death, or threat to the resident; and

(B) by conducting an investigation of the emergency and resulting resident injury, death, or threat, and submitting a completed HHSC Form 3613-A, SNF, NF, ICF/IID, ALF, DAHS and PPECC Provider Investigation Report with Cover Sheet. The facility must submit the completed form within five working days after making the telephone report required by paragraph (2)(A) of this subsection.

(p) Emergency Response System.

(1) The facility manager and designee must enroll in an emergency communication system in accordance with instructions from HHSC.

(2) A facility must respond to requests for information received through the emergency communication system in the format established by HHSC.

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 December 5, 2023.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 438-3161

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26 TAC §§553.261, 553.263, 553.265, 553.267, 553.269, 553.271 - 553.273, 553.275

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.261. Coordination of Care.

§553.263. Health maintenance activities.

§553.265. Resident Records and Retention.

§553.267. Rights.

§553.269. Access to Residents and Records by the State Long-Term Care Ombudsman Program.

§553.271. Postings.

§553.272. Advertisements, Solicitations, and Promotional Material.

§553.273. Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities.

§553.275. Emergency Preparedness and Response.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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SUBCHAPTER F. ADDITIONAL LICENSING STANDARDS FOR CERTIFIED ALZHEIMER'S ASSISTED LIVING FACILITIES

26 TAC §§553.301, 553.303, 553.305, 553.307, 553.309

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.301. Manager or Supervisor Qualifications and Training.

(a) The manager of a [~~the~~] certified Alzheimer's facility or the supervisor of a [~~the~~] certified Alzheimer's unit must be 21 years of age or older, and have:

(1) an associate [~~associate's~~] degree in nursing or health care management;

(2) a bachelor's degree in psychology, gerontology, nursing, or a related field; or

(3) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working with persons with dementia.

(b) In addition to the manager training requirements in §553.253 of this chapter (relating to Employee Qualifications and Training), the [~~The~~] manager of an Alzheimer's certified facility or the supervisor of an Alzheimer's certified unit must complete six hours of annual continuing education regarding dementia care.

§553.303. Staff Training.

(a) In addition to the staff training requirements under §553.253 of this division [~~chapter~~] (relating to Employee Qualifications and Training), all staff members must receive four hours of dementia-specific orientation prior to assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(1) basic information about the causes, progression, recognition, and management of Alzheimer's disease and related disorders;

(2) managing dysfunctional, disruptive, or maladaptive behavior[~~;~~] and the causes of these behaviors;

(3) identifying and alleviating safety risks to residents with Alzheimer's disease and related disorders; and[~~,~~]

(4) basic infection prevention and control principles.

(b) In addition to the staff training requirements under §553.253 of this division [~~chapter~~], attendants must receive 16 hours of on-the-job supervision and training for care and services of individuals residing in the Alzheimer's certified unit before providing care in the unit [~~within the first 16 hours of employment following orientation~~]. Training must cover:

(1) providing assistance with the activities of daily living to individuals with a diagnosis of Alzheimer's disease or similar cognitive limitations;

(2) emergency and evacuation procedures specific to the residents residing in the Alzheimer's certified unit [~~dementia population~~];

(3) managing dysfunctional, disruptive, or maladaptive behavior; [and]

(4) behavior management, including prevention of aggressive behavior and de-escalation techniques, [fall prevention,] or alternatives to restraints;[.]

(5) fall and accident prevention; and

(6) sexual relationships and consent.

(c) In addition to the staff training requirements under §553.253 of this division [chapter], attendants must annually complete 12 hours of in-service education regarding Alzheimer's disease and related disorders that meets the following criteria.

(1) One hour of annual training must address behavior management, including prevention of aggressive behavior and de-escalation techniques and alternatives to restraints.

(2) One hour of annual training must address [, or] fall and accident prevention [, or alternatives to restraints].

(3) One hour of annual training must address elopement prevention.

(4) The remaining nine hours of in-service training may include the following topics:
[Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Additional suggested topics include:]

(A) [(1)] assessing resident capabilities and developing and implementing service plans;

(B) [(2)] promoting resident dignity, independence, individuality, privacy, and choice;

(C) [(3)] planning and facilitating activities appropriate for the dementia resident;

(D) [(4)] communicating with families and other persons interested in the resident;

(E) [(5)] resident rights and principles of self-determination;

(F) [(6)] care of elderly persons with physical, cognitive, behavioral, and social disabilities;

(G) [(7)] medical and social needs of the resident;

(H) [(8)] common psychotropics and side effects; and

(I) [(9)] local community resources.

(d) Training on the requirements in subsection (c) of this section must be competency-based and include competency verification through return demonstration or written or oral assessment as applicable. Subject matter must address the unique needs of the facility.

§553.305. Staffing.

(a) A facility must employ sufficient staff to provide services for, [and] meet the needs of, and ensure the health and safety of residents residing in the Alzheimer's certified facility or unit based on each resident's: [its Alzheimer's residents.]

(1) cognitive and physical acuity;

(2) behavioral health concerns; and

(3) wandering and elopement precautions.

(b) In a large facility or unit licensed for [facilities or units with] 17 or more residents, two staff members must be present and [immediately] available at all times to respond to resident needs upon request or as necessary when residents are present.

§553.307. Admission Procedures, Evaluation [Assessment], and Service Plan.

(a) Alzheimer's Assisted Living Disclosure Statement form. A facility must use the Alzheimer's Assisted Living Disclosure Statement form and amend the form if changes in the operation of the facility affect the information in the form.

(b) Pre-admission. The facility must establish procedures, such as an application process, interviews, and home visits, to ensure that the placement of prospective residents is appropriate and that their needs can be met.

(1) Prior to admitting a resident, facility staff must discuss and explain the Alzheimer's Assisted Living Disclosure Statement form with the legally authorized representative [family] or responsible party.

(2) The facility must give the Alzheimer's Assisted Living Disclosure Statement form to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease and related disorders.

(c) Evaluation [Assessment]. The facility must conduct a resident evaluation [make a comprehensive assessment] of a [each] resident within 14 days after admission and annually thereafter. The evaluation [assessment] must include the items listed in §553.259(b)[(1)] of this division [chapter] (relating to Admission Policies and Procedures).

(d) Service plan. Facility staff, with input from the family, if available, must develop an individualized service plan for each resident, based upon the resident evaluation [assessment], within 14 days after admission. The service plan must address the individual needs, preferences, and strengths of the resident. The service plan must be designed to help the resident maintain the highest possible level of physical, cognitive, and social functioning. The service plan must be updated annually and upon a significant change in condition, based on an evaluation [assessment] of the resident.

§553.309. Activities Program.

(a) A facility must encourage socialization, cognitive awareness, self-expression, and physical activity in a planned and structured activities program. Activities must be individualized, based upon the resident evaluation [assessment], and appropriate for each resident's abilities.

(b) The activities [activity] program must contain a balanced mixture of activities addressing cognitive, recreational, and activity of daily living (ADL) needs.

(1) Cognitive activities include arts, crafts, storytelling, poetry readings, writing, music, reading, discussion, reminiscences, and reviews of current events.

(2) Recreational activities include all socially interactive activities, such as board games and cards, and physical exercise. Care of pets is encouraged.

(3) Self-care ADLs include grooming, bathing, dressing, oral care, and eating. Occupational ADLs include cleaning, dusting, cooking, gardening, and yard work. Residents must be allowed to perform self-care ADLs as long as they are able, to promote independence and self-worth.

(c) The facility must encourage but never force residents [Residents must be encouraged, but never forced,] to participate in activities. Residents who choose not to participate in a large group

activity must be offered at least one small group or one-on-one activity per day.

(d) A facility [~~Facilities~~] must have an employee who is responsible for leading activities.

(1) A facility licensed for [~~Facilities with~~] 16 or fewer residents must designate an employee to plan, supply, implement, and record activities.

(2) A facility licensed for [~~Facilities with~~] 17 or more residents must employ, at a minimum, an activity director for 20 hours weekly. The activity director must be a qualified professional who:

(A) is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist, a therapeutic recreation assistant, or an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification or[~~,~~] the National Certification Council for Activity Professionals [~~, or the Consortium for Therapeutic Recreation/Activities Certification, Inc.~~];

(B) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in an activities program in a health care setting; or

(C) has completed an activity director training course approved by the National Association for Activity Professionals or the National Therapeutic Recreation Society.

(e) The activity director or designee must review each resident's medical and social history, preferences, and dislikes, in determining appropriate activities for the resident. Activities must be tailored to each resident's unique requirements and skills.

(f) The activities program must provide opportunities for group and individual settings. On weekdays, each resident must be offered at least one cognitive activity, two recreational activities, and three ADL activities each day. The cognitive and recreational activities (structured activities) must be at least 30 minutes in duration, with a minimum of six and a half hours of structured activity for the entire week. At least an hour and a half of structured activities must be provided during the weekend and must include at least one cognitive activity and one physical activity.

(g) The activity director or designee must create a monthly activities schedule. Structured activities should occur at the same time and place each week to ensure a consistent routine within the facility.

(h) The activity director or designee must annually attend at least six hours of continuing education regarding Alzheimer's disease or related disorders.

(i) Special equipment and supplies necessary to accommodate persons with a physical disability or other persons with special needs must be provided as appropriate.

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26 TAC §553.311

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeal implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.311. Physical Plant Requirements for Alzheimer's Units.

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. INSPECTIONS, INVESTIGATIONS, AND INFORMAL DISPUTE RESOLUTION

26 TAC §§553.327, 553.328, 553.331

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments and new section implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.327. Inspections, Investigations, and Other Visits.

(a) HHSC inspection and survey personnel perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate, or as required for carrying out the responsibilities of licensing.

(b) In addition to the inspections required under Subchapter B of this chapter (relating to Licensing), HHSC may inspect [~~inspects~~] a facility [~~at least~~] once every two years after the initial inspection.

(c) An inspection may be conducted by an individual surveyor or by a team, depending on the purpose of the inspection or survey, size of facility, and service provided by the facility, and other factors.

(d) To determine standard compliance which cannot be verified during regular working hours, HHSC, with the least possible interference to staff and residents, may conduct night or weekend inspections to cover specific aspects of a facility's operation.

(e) Generally, HHSC conducts routine and nonroutine inspections, surveys, complaint investigations, and other visits made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility on an unannounced basis, unless there is justification for an exception.

(f) Certain visits may be announced, including, but not limited to, conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(g) When HHSC conducts a complaint investigation, HHSC notifies the facility of the complaint received and a summary of the complaint, without identifying the source of the complaint. A complaint is an allegation received by HHSC regarding:

(1) abuse, neglect, or exploitation of a resident; or

(2) a violation of state standards.

(h) The facility must make all books, records, and other documents maintained by or on behalf of a facility accessible to HHSC upon request.

(1) HHSC is authorized to photocopy documents, photograph residents, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that HHSC reasonably believes threaten the health and safety of a resident.

(2) Records and documents which may be requested and photocopied or otherwise reproduced include, but are not limited to, admission sheets, medication profiles, observation notes, medication refusal notes, and menu records.

(3) When the facility is requested to furnish the copies, the facility may charge HHSC at the rate not to exceed the rate charged by HHSC for copies. Collection must be by billing HHSC. The procedure of copying is the responsibility of the administrator or his designee. If copying requires removal of the records from the facility, a representative of the facility will be expected to accompany the records and ensure [~~assure~~] their order and preservation.

(4) HHSC protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC policy.

(5) If a facility maintains electronic records, it must have a mechanism for printing all documentation if a surveyor or investigator requests a printed copy.

§553.328. Plan of Removal.

(a) During an onsite inspection, if HHSC finds a that a violation has created an immediate threat to the health and safety of a resident, a facility must submit sufficient documentation and present evidence showing that satisfactory action has been taken to resolve the immediacy of the identified threat by immediately submitting a plan of removal.

(b) The plan of removal must include:

(1) a description of steps the facility will take to remove the immediacy of the violation;

(2) a description of how affected or potentially affected residents will be identified;

(3) the immediate actions or changes the facility will make to ensure the violation does not reoccur and the staff responsible for oversight and implementation of the actions;

(4) the steps to be taken to monitor the changes; and

(5) a timeline for implementing all actions identified by the facility in the plan of removal.

(c) The facility must provide a plan of removal upon request from HHSC.

(d) The facility must implement all actions identified in the plan of removal.

§553.331. Determinations and Actions (Investigation Findings).

(a) HHSC determines if a facility meets HHSC licensing rules, including physical plant and facility operation requirements, by conducting inspections, surveys, investigations, and onsite [~~on-site~~] visits.

(b) HHSC lists violations of licensing rules on a report of contact. The report of contact includes a specific reference to a licensing rule that has been violated.

(c) At the conclusion of an inspection, survey, investigation, or onsite [~~on-site~~] visit, an HHSC surveyor conducts an exit conference to advise the facility of the findings resulting from the inspection, survey, investigation, or onsite [~~on-site~~] visit.

(d) At the exit conference, the surveyor provides a copy of the report of contact described in subsection (b) of this section to the facility.

(e) If, after the initial exit conference, an HHSC surveyor cites an additional licensing rule violation, the surveyor conducts another exit conference regarding the newly identified violations and updates the report of contact with a specific reference to the licensing rule that has been violated.

(f) HHSC provides to the facility a written statement of violations from an inspection, survey, investigation, or onsite [~~on-site~~] visit on HHSC Form 3724, Statement of Licensing Violations and Plan of Correction, within 10 days after the final exit conference. The statement of violations includes a clear and concise summary in nontechnical language of each licensing rule violation. The statement of violations does not include names of residents or staff, statements that identify a resident, or other prohibited information.

(g) A facility must submit an acceptable plan of correction to the HHSC regional director for the HHSC surveyor within 10 working days after receiving the statement of violations described in subsection (f) of this section. An acceptable plan of correction must address:

(1) how corrective action will be accomplished for a resident affected by a violation of a licensing rule;

(2) how the facility will identify other residents who may be affected by the violation of the licensing rule;

(3) how the corrective action the facility implements will ensure the violation does not reoccur;

(4) how the facility will monitor its corrective action to ensure the violation is being corrected and will not reoccur; and

(5) dates when corrective action will be completed.

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SUBCHAPTER H. ENFORCEMENT
DIVISION 1. GENERAL INFORMATION

26 TAC §553.351, §553.353

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.351. When may HHSC take an enforcement action?

§553.353. What enforcement actions may HHSC take?

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26 TAC §553.351

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.351. Enforcement General Information.

(a) HHSC may take enforcement action when a facility is in violation of:

(1) the sections of this chapter;

(2) the Texas Health and Safety Code, Chapter 247;

(3) an order adopted under Texas Health and Safety Code, Chapter 247; or

(4) a license issued under Texas Health and Safety Code, Chapter 247.

(b) HHSC may take the following enforcement actions:

(1) suspend a license;

(2) order immediate closing of all or part of the facility;

(3) revoke a license;

(4) refer the violation to the Office of the Attorney General for involuntary
appointment of a trustee, injunction, or for the assessment of civil penalties; or

(5) assess administrative penalties.

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DIVISION 2. ACTIONS AGAINST A LICENSE: SUSPENSION

26 TAC §§553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.413, 553.415, 553.417, 553.419, 553.421, 553.423, 553.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.401. When may HHSC suspend a facility's license?

§553.403. Does HHSC provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person?

§553.405. May HHSC suspend a license at the same time another enforcement action is occurring?

§553.407. How does HHSC notify a license holder of a proposed suspension?

§553.409. What information does HHSC provide the license holder concerning a proposed suspension?

§553.411. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before HHSC begins proceedings to suspend a license?

§553.413. How does a license holder request an opportunity to show compliance?

§553.415. How much time does a license holder have to request an opportunity to show compliance?

§553.417. What must the request for an opportunity to show compliance contain?

§553.419. How does HHSC conduct the opportunity to show compliance?

§553.421. Does HHSC give the license holder a written affirmation or reversal of the proposed action?

§553.423. How does HHSC notify a license holder of its final decision to suspend a license?

§553.425. May the facility request a formal hearing?

§553.427. How long does a license holder have to request a formal hearing?

§553.429. If a license holder does not appeal, when does the suspension take effect?

§553.431. If a license holder appeals, when does the suspension take effect?

§553.433. May a facility operate during a suspension?

§553.435. How long is the suspension?

§553.437. How does HHSC decide to remove the suspension?

§553.439. Must the license be returned to HHSC during a license suspension?

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26 TAC §553.401

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.401. Suspension Actions Against a License.

(a) HHSC may suspend a facility's license when the applicant, license holder, or a controlling person violates:

(1) Texas Health and Safety Code, Chapter 247; a section, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or term of a license issued under Chapter 247 in a repeated or substantial manner; or

(2) §553.751 of this subchapter (relating to Administrative Penalties).

(b) HHSC provides written notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person.

(c) HHSC may suspend a license at the same time another enforcement action is occurring.

(d) HHSC notifies a license holder of a proposed suspension by certified and first-class mail.

(e) HHSC provides the license holder with the facts or conduct alleged to warrant the suspension.

(f) The license holder has an Opportunity to Show Compliance (OSC) with all requirements for keeping the license before HHSC begins proceedings to suspend a license.

(g) A license holder must send a written request for an OSC to HHSC Regulatory Enforcement.

(h) A request for an OSC must be postmarked within 10 calendar days after the date of HHSC notice letter and must be received in the office of HHSC Regulatory Enforcement within 10 calendar days after the postmark.

(i) The request to show compliance must contain specific documentation showing how the facts or conduct that support the proposed suspension are incorrect.

(j) HHSC limits its review to documentation submitted by the license holder and information used by HHSC as the basis for its proposed action. The review is not conducted as an adversarial hearing.

(k) HHSC gives the license holder a written affirmation or reversal of the proposed action.

(l) HHSC notifies the facility license holder by certified and first-class mail of its final decision to suspend a license.

(m) The facility may request a formal hearing.

(n) The license holder has 15 calendar days from receipt of the certified and first-class mail notice to request a formal hearing.

(o) If a license holder does not appeal, the suspension takes effect after the deadline for an appeal passes.

(p) If a license holder appeals, the status of the license remains in effect until after the appeal is complete.

(q) A facility may continue to operate as long as the suspension is under appeal.

(r) The suspension remains in effect until HHSC determines that the reason for the suspension no longer exists, but no longer than the license expiration date.

(s) HHSC conducts an onsite inspection to decide whether to remove the suspension.

(t) The license must be returned to HHSC during a license suspension.

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DIVISION 3. ACTIONS AGAINST A LICENSE: REVOCATION

26 TAC §§553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.451. When may HHSC revoke a license?
§553.453. Does HHSC provide notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person?
§553.455. May HHSC take more than one enforcement action at a time against a license?
§553.457. How does HHSC notify a license holder of a proposed revocation?
§553.459. What information does HHSC provide the license holder concerning a proposed revocation?
§553.461. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before HHSC begins proceedings to revoke a license?
§553.463. How does a license holder request an opportunity to show compliance?
§553.465. How much time does a license holder have to request an opportunity to show compliance?
§553.467. What must the request for the opportunity to show compliance contain?
§553.469. How does HHSC conduct the opportunity to show compliance?
§553.471. Does HHSC give the license holder a written affirmation or reversal of the proposed action?
§553.473. Does the license holder have an opportunity for a formal hearing?
§553.475. How long does a license holder have to request a formal hearing?
§553.477. When does the revocation take effect if the license holder does not appeal?
§553.479. When does the revocation take effect if the license holder appeals the revocation?
§553.481. May a facility operate during a revocation?
§553.483. What happens to a license if it is revoked?

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26 TAC §553.451

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.451. Revocation Actions Against a License.

(a) HHSC may revoke a license when the applicant, license holder, or a controlling person:

(1) violates section §553.751 of this subchapter (relating to Administrative Penalties);

(2) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Texas Health and Safety Code, Chapter 247; or term of a license issued under Texas Health and Safety Code, Chapter 247 in a repeated or substantial manner;

(3) submits false statements on a license application;

(4) submits false statements on license application attachments;

(5) submits misleading statements on a license application;

(6) submits misleading statements on license application attachments;

(7) uses subterfuge or other evasive means to obtain a license;

(8) conceals a material fact on a license application that would have been the basis for denying a license under §553.17 of this chapter (relating to Criteria for Licensing);

(9) fails to disclose information, as required by Subchapter B of this chapter (relating to Licensing) that would have been the basis to deny a license in §553.17 of this chapter; or

(10) violates Texas Health and Safety Code §247.021.

(b) HHSC provides written notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person.

(c) HHSC may take more than one enforcement action at a time against a license.

(d) HHSC notifies a license holder by certified and first-class mail of a proposed revocation.

(e) HHSC provides the license holder with the facts or conduct alleged to warrant the proposed revocation.

(f) The license holder has an Opportunity to Show Compliance (OSC) with all requirements for keeping the license before HHSC begins proceedings to revoke a license.

(g) A license holder must send a written request for an OSC to HHSC Regulatory Enforcement.

(h) A request for an OSC must be postmarked within 10 calendar days after the date of the HHSC notice letter and must be received in the office of HHSC Regulatory Enforcement within 10 calendar days after the postmark.

(i) A request for the OSC must contain specific documentation showing how the facts or conduct that support the proposed revocation are incorrect.

(j) HHSC conducts its review of limited documentation submitted by the license holder and information used by HHSC as the basis for its proposed action. The review is not conducted as an adversarial hearing.

(k) HHSC gives the license holder a written affirmation or reversal of the proposed action.

(l) The license holder has an opportunity for a formal hearing.

(m) The license holder has 15 calendar days from receipt of the certified and first-class mail notice to request a hearing.

(n) The revocation takes effect if the license holder does not appeal after the deadline for an appeal passes.

(o) The revocation does not take effect until the appeal is complete.

(p) A facility may continue to operate as long as the revocation is under appeal.

(q) If revoked, the license must be returned to HHSC.

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DIVISION 4. ACTIONS AGAINST A LICENSE: TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

26 TAC §553.501, §553.503

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.501. Why does HHSC refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction?

§553.503. To whom does HHSC refer a facility that is operating without a license?

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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26 TAC §553.501

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the

quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.501. Temporary Restraining Order and Injunctions Against a License.

(a) HHSC refers a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction when:

(1) a violation creates an immediate threat or threat to the health and safety of residents;

(2) a facility is operating without a license; or

(3) HHSC is denied entry to a facility that is alleged to be operating without a license.

(b) HHSC will refer a facility that is operating without a license to the:

(1) district attorney;

(2) county attorney;

(3) city attorney; or

(4) Attorney General.

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DIVISION 5. ACTIONS AGAINST A LICENSE: EMERGENCY LICENSE SUSPENSION AND CLOSING ORDER

26 TAC §§553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.589, 553.591, 553.593, 553.595, 553.597

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.551. When may HHSC suspend a license or order an immediate closing of all or part of a facility?
§553.553. How does HHSC notify a facility of a license suspension or immediate closing of all or part of a facility?
§553.555. When does an order suspending a license or closing all or part of a facility go into effect?
§553.557. How long is an order suspending a license or closing all or part of a facility valid?
§553.559. May a license holder request a hearing?
§553.561. Where can a license holder find information about administrative hearings?
§553.563. Does a request for an administrative hearing suspend the effectiveness of the order?
§553.565. Does anything happen to a resident's rights or freedom of choice during an emergency relocation?
§553.567. Who does HHSC notify if all or part of a facility is closed?
§553.569. Who must a facility notify if all or part of the facility is closed?
§553.571. Who decides where to relocate a resident?
§553.573. Who arranges the relocation?
§553.575. Is a resident's preference considered?
§553.577. What requirements must the facility a resident chooses for relocation meet?
§553.579. Is a receiving facility allowed to temporarily exceed its licensed capacity?
§553.581. Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity?
§553.583. What requirements must a facility meet to obtain a temporary waiver?
§553.585. How long can a facility have a temporary waiver?
§553.587. Does HHSC monitor a facility with a temporary waiver?
§553.589. What records, reports, and supplies are sent to the receiving facility for transferred residents?
§553.591. May a resident return to the closed facility if it reopens within 90 calendar days?
§553.593. Do the relocated residents have any special admission rights at the closed facility?
§553.595. What options does a relocated resident have?
§553.597. Are relocated residents who return to the facility considered new admissions?

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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26 TAC §553.551

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas

Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.551. Emergency License Suspension and Closing Order Actions Against a License.

(a) HHSC may suspend a license or order an immediate closing of all or part of a facility when:

(1) the facility is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) HHSC will notify a facility of a license suspension or immediate closing of all or part of a facility by a notice hand-delivered to a facility staff member.

(c) An order suspending a license or closing all or part of a facility is effective immediately upon receipt of the hand-delivered written notice or on a later date specified in the order.

(d) An order suspending a license or closing all or part of a facility is valid for 10 calendar days after the effective date of the order.

(e) A license holder may request a hearing.

(f) License holders can find information about administrative hearings in Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act); Texas Government Code, Chapter 2001; and 1 TAC Chapter 155 (relating to Rules of Procedure).

(g) A request for an administrative hearing does not suspend the effectiveness of the order.

(h) A resident's rights or freedom of choice is not affected during an emergency relocation.

(i) If all or part of a facility is closed, HHSC notifies:

(1) the local health department director;

(2) the city or county health authority; and

(3) representatives of the appropriate state agencies.

(j) If all or part of the facility is closed, a facility must notify each resident and, as applicable, his or her:

(1) guardian or legally authorized representative; and

(2) attending physician.

(k) The resident or resident's legally authorized representative, guardian, or responsible party may designate a preference for a specific facility or for other arrangements regarding where to relocate a resident.

(l) HHSC arranges to relocate residents to other facilities in the area.

(m) HHSC considers residents' relocation preferences.

(n) The following apply when a resident chooses a facility for relocation.

(1) The facility must be in good standing with HHSC.

(2) If the facility is certified under 42 United States Code, Chapter 7, Subchapters XVIII and XIX, it must be in good standing under its contract.

(3) The facility must be able to meet the needs of the resident.

(o) A receiving facility is allowed to temporarily exceed its licensed capacity.

(p) A receiving facility may be allowed to temporarily exceed its licensed capacity to prevent substantial transportation of a resident.

(q) A receiving facility must ensure that acceptance of a resident under a temporary waiver:

(1) does not compromise the health and safety of residents; and

(2) can be accommodated by facility attendants and dietary services staff.

(r) A facility may have a temporary waiver until residents can be transferred to a permanent location.

(s) HHSC may monitor a facility with a temporary waiver to ensure compliance with applicable rules.

(t) The following reports, records, and supplies must be inventoried by the closing facility and sent to the receiving institution for each transferred resident:

(1) a copy of the current physician's orders for:

(A) medication;

(B) treatment;

(C) diet; and

(D) special services required;

(2) personal information, such as name and address of a resident's guardian, legally authorized representative, or responsible party;

(3) the name and phone number of the resident's attending physician;

(4) Medicare and Medicaid identification number, if applicable;

(5) Social Security number;

(6) other identification information as deemed necessary and available;

(7) a copy of the resident's current evaluation and service plan;

(8) all medications dispensed in the resident's name that:

(A) have current physician's orders;

(B) have not passed the expiration date or been discontinued by physician orders; and

(C) the resident takes on a regular or as needed basis;

(9) the resident's personal belongings, clothing, and toilet articles; and

(10) resident trust fund accounts maintained by the closing facility.

(u) A relocated resident has the first right to return to the closed facility if it reopens within 90 calendar days.

(v) A relocated resident may choose to:

(1) return to the reopened facility;

(2) remain in the receiving facility if that facility agrees to admit the resident; or

(3) choose other accommodations.

(w) A relocated resident who returns to the facility must be treated as a new admission, and all procedures regarding new admissions apply.

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 6. ACTIONS AGAINST A LICENSE: CIVIL PENALTIES

26 TAC §553.601, §553.603

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.601. When may HHSC refer a facility to the Office of the Attorney General for assessment of civil penalties?

§553.603. What is the amount of the civil penalty that can be assessed for operating without a license?

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26 TAC §553.601

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.601. Civil Penalties.

(a) HHSC may refer a facility to the Office of the Attorney General for assessment of civil penalties for a violation that threatens the health and safety of a resident.

(b) A civil penalty of $1,000 to $10,000 per day may be assessed for operating a facility without a license.

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DIVISION 7. TRUSTEES: INVOLUNTARY APPOINTMENT OF A TRUSTEE

26 TAC §§553.651, 553.653, 553.655, 553.657, 553.659, 553.661

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.651. When may HHSC petition a court for the involuntary appointment of a trustee to operate a facility?

§553.653. When may HHSC disburse emergency assistance funds?

§553.655. Must a facility reimburse HHSC for emergency assistance funds?

§553.657. When is reimbursement for emergency assistance funds due to HHSC?

§553.659. Who is responsible for reimbursement?

§553.661. What happens if a facility does not reimburse HHSC in one year?

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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26 TAC §553.651

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.651. Involuntary Appointment of a Trustee.

(a) HHSC may petition a court for the involuntary appointment of a trustee to operate a facility when one or more of the following conditions exist:

(1) the facility is operating without a license;

(2) the facility's license has been suspended or revoked;

(3) an imminent threat to the health and safety of the residents exists and license suspension or revocation procedures are pending against the facility;

(4) an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the facility is closing, whether voluntarily or through an emergency closure order, and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) HHSC may disburse emergency assistance funds when a court order is given.

(c) A facility will reimburse HHSC for emergency assistance funds.

(d) Reimbursement for emergency assistance funds is due not later than one year after the date the trustee received the funds.

(e) The owner of the facility at the time the trustee was appointed is responsible for reimbursement.

(f) If a facility does not reimburse emergency assistance funds to HHSC in one year, HHSC refers the license holder to the Office of the Attorney General. HHSC also may deny a Medicaid provider contract.

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 8. TRUSTEES: APPOINTMENT OF A TRUSTEE BY AGREEMENT

26 TAC §§553.701, 553.703, 553.705, 553.707, 553.709, 553.711

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.701. May a facility request the appointment of a trustee to assume operation of a facility?

§553.703. Who may make the request?

§553.705. What are the requirements for a trustee agreement?

§553.707. When does an agreement for a trustee terminate?

§553.709. What happens if the controlling person wants to terminate the agreement, but HHSC determines termination of the agreement is not in the best interest of the residents?

§553.711. When HHSC appoints a trustee, is the facility always required to pay assessed civil money penalties?

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26 TAC §553.701

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.701. Appointment of a Trustee by Agreement.

(a) A facility may request the appointment of a trustee to assume operation of a facility.

(b) A person holding a controlling interest in a facility may request that HHSC assume the operation of the facility through the appointment of a trustee.

(c) A trustee agreement must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all legal rights of the residents.

(d) An agreement for a trustee terminates at the time specified in the agreement or upon receipt of notice of intent to terminate sent by HHSC or by the person holding a controlling interest in the facility.

(e) If the controlling person wants to terminate the agreement but HHSC determines termination of the agreement is not in the best interest of the residents, HHSC may petition a court for an involuntary appointment of a trustee under the terms of §553.651 of this subchapter (relating to Involuntary Appointment of a Trustee).

(f) When HHSC appoints a trustee, the facility is required to pay the assessed the civil money penalties.

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 9. ADMINISTRATIVE PENALTIES

26 TAC §553.751

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.751. Administrative Penalties.

(a) Assessment of an administrative penalty. HHSC may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by HHSC;

(3) refuses to allow an HHSC representative to inspect:

(A) a book, record, or file that a facility must maintain; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of, or retaliates against, an HHSC representative or the enforcement of this chapter;

(5) willfully interferes with, or retaliates against, an HHSC representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final;

(7) fails to notify HHSC of a change of ownership before the effective date of the change of ownership;

(8) willfully interferes with the State Ombudsman, a certified ombudsman, or an ombudsman intern performing the functions of the Ombudsman Program as described in Chapter 88 of this title (relating to State Long-Term Care Ombudsman Program); or

(9) retaliates against the State Ombudsman, a certified ombudsman, or an ombudsman intern:

(A) with respect to a resident, employee of a facility, or other person filing a complaint with, providing information to, or otherwise cooperating with the State Ombudsman, a certified ombudsman, or an ombudsman intern; or

(B) for performing the functions of the Ombudsman Program as described in Chapter 88 of this title.

(b) Criteria for assessing an administrative penalty. HHSC considers the following in determining the amount of an administrative penalty:

(1) the gradations of penalties established in subsection (d) of this section;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) the license holder's efforts to correct the violation;

(6) the size of the facility and of the business entity that owns the facility; and

(7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, HHSC may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. HHSC uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.
Figure: 26 TAC §553.751(d) (No change.)

(e) Administrative penalty assessed against a resident. HHSC does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) HHSC issues a preliminary report stating the facts on which HHSC concludes that a violation has occurred after HHSC has:

(A) examined the possible violation and facts surrounding the possible violation; and

(B) concluded that a violation has occurred.

(2) HHSC may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) HHSC provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

(A) a brief summary of the violation;

(B) the amount of the recommended administrative penalty;

(C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

(i) the date on which the license holder must file with HHSC a plan of correction for approval by HHSC; and

(ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

(D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

(A) give HHSC written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to HHSC for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to HHSC that the violation has been corrected, HHSC inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and HHSC is not assessing an administrative penalty; or

(B) the correction is not satisfactory, and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice that the correction is not satisfactory and that a penalty is recommended under paragraph (6)(B) of this subsection, the license holder may:

(A) give HHSC written consent to HHSC report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) HHSC assesses the recommended administrative penalty;

(B) HHSC gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Right [~~Opportunity~~] to correct.

(1) HHSC allows a license holder to correct a violation before assessing an administrative penalty, except a violation described in paragraph (2) of this subsection. To avoid assessment of a penalty, a license holder must correct a violation not later than 45 calendar days

after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) HHSC does not allow a license holder to avoid a penalty assessment based on its correction of a violation:

(A) described by subsection (a)(2)-(9) of this section;

(B) of Texas Health and Safety Code §260A.014 or §260A.015;

(C) relating [~~related~~] to advance directives as described in §553.259(d) of this chapter (relating to Admission Policies and Procedures);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §553.287 [~~§553.267~~] of this chapter (relating to Rights);

(ii) the same right of all residents under §553.287 [~~§553.267~~] of this chapter; or

(iii) §553.255 of this chapter (relating to All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder) that occurs before the second anniversary of the date of a previous violation of §553.255 of this chapter;

(E) that is written because of an inappropriately placed resident, except as described in §553.261 [~~§553.259(e)~~] of this chapter (relating to Inappropriate Placement in a Type A or Type B Facility);

(F) that is a pattern of violation that results in actual harm;

(G) that is widespread in scope and results in actual harm;

(H) that is widespread in scope, constitutes a potential for more than minimal harm, and relates to:

(i) resident evaluation [~~assessment~~] as described in §553.259(b) of this chapter;

(ii) staffing, including staff training, as described in §553.253 of this chapter (relating to Employee Qualifications and Training);

(iii) medication administration as described in §553.267 [~~§553.261(a)~~] of this chapter (relating to Medications [~~Coordination of Care~~]);

(iv) infection control as described in §553.277 [~~§553.261(f)~~] of this chapter (relating to Infection Prevention and Control);

(v) restraints as described in §553.279 [~~§553.261(g)~~] of this chapter (relating to Restraints and Seclusion); or

(vi) emergency preparedness and response as described in §553.295 [~~§553.275~~] of this chapter (relating to Emergency Preparedness and Response); or

(I) is an immediate threat to the health or safety of a resident.

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, HHSC may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) HHSC is not required to offer the license holder a right [~~opportunity to correct~~] the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (7) of this section, the administrative hearing is held in accordance with HHSC rules at Texas Administrative Code, Title 1, [~~1 TAC~~] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) HHSC may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under HHSC supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that HHSC determines constitutes immediate jeopardy to the health or safety of a resident.

(3) HHSC offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from HHSC; and

(B) agree to waive the license holder's right to an administrative hearing if HHSC approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

(A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

(C) establish clear goals to be achieved through the proposed changes;

(D) establish a timeline [~~time line~~] for implementing the proposed changes; and

(E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

(B) offer or improve dental services for residents; and

(C) improve the overall quality of life for residents.

(7) HHSC may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) HHSC approves or denies a license holder's amelioration plan not later than 45 calendar days after the date HHSC receives the plan. If HHSC approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) HHSC does not offer amelioration to a license holder:

(A) more than three times in a two-year period; or

(B) more than one time in a two-year period for the same or a similar violation.

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 December 5, 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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER E. LEAVE POOLS

31 TAC §51.143

The Texas Parks and Wildlife Department proposes new 31 TAC §51.143, concerning Peace Officer Legislative Leave Pool. The most recent session of the Texas Legislature enacted Senate Bill 922, which amended Parks and Wildlife Code, Chapter 11, by adding new §11.0183, which requires the department to allow a peace officer commissioned by the department to voluntarily transfer up to eight hours of compensatory time or annual leave per year to a leave pool for use as leave for legislative activities conducted on behalf of a law enforcement association. Senate Bill 922 requires the commission to adopt rules and prescribe procedures relating to the operation of the legislative leave pool.

The proposed new rule would set forth the purpose of the leave pool, designate a pool administrator, and require the pool administrator, with the advice and consent of the executive director of the agency, to develop and implement operating procedures consistent with the requirements of the proposed new rule and relevant law governing operation of the pool.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be compliance with the directives of the legislature.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule will not result in any direct economic costs to any small businesses, micro-businesses, or rural communities; therefore, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will create a government program (the peace officer legislative leave pool); not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (to create the peace officer legislative leave pool); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Patty David, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4808; email: patricia.david@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The new rule is proposed under the authority of Parks and Wildlife Code, §11.0183, which requires the commission to adopt rules to create and administer a peace officer legislative leave pool.

The proposed new rule affects Parks and Wildlife Code, Chapter 11.

§51.143. Peace Officer Legislative Leave Pool.

A leave pool is established to provide peace officers commissioned by the department with the opportunity to use annual leave or compensatory time donated to the pool for use as legislative leave on behalf of a law enforcement association.

(1) The director of human resources is designated as the pool administrator.

(2) The pool administrator, with the advice and consent of the executive director, will establish operating procedures consistent with the requirements of this section and relevant law governing operation of the pool.

(3) Donations to the pool are strictly voluntary.

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 December 11, 2023.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER O. ADVISORY COMMITTEES

31 TAC §51.673

The Texas Parks and Wildlife Department proposes new 31 TAC §51.673, concerning the Oyster Advisory Committee (OAC).

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Under Parks and Wildlife Code, Chapter 76, the legislature has designated TPWD as the primary regulatory agency for public oyster beds and certificates of location (oyster leases), including the taking, possession, purchase, and sale of oysters. Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must state the purpose of the committee and describe the way the committee will report to the agency. The rules may also establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under this authority, the Commission has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. These advisory committees perform a valuable service for the department and the people of Texas.

The department is the primary state agency responsible for the regulation and management of public and private oyster beds, including the taking, possession, purchase, and sale of oysters. Staff have determined that the creation of an advisory board for matters involving oysters would be helpful in assisting the department and the commission in determining and executing appropriate strategies to maximize the long-term health of oyster resources and the additional habitat and ecosystem services they provide.

Dr. Tiffany Hopper, Science and Policy Branch Chief, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of administering the rule. There will be no impact on persons required to comply with the rule as proposed.

Dr. Hopper also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the enhancement of department and commission decision-making with respect to regulation of oysters.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule will not result in any direct economic costs to any small businesses, micro-businesses, or rural community; therefore, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; create a new regulation (to provide for the new advisory group); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8575; email: cfish@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The new rule is proposed under Government Code, Chapter 2110, which requires the adoption of rules regarding state agency advisory committees.

The proposed new rule affects Government Code, Chapter 2110.

§51.673. Oyster Advisory Committee (OAC).

(a) The OAC is created to advise the department on all matters pertaining to oysters in Texas.

(b) The OAC shall be composed of up to 24 members of the public.

(c) The OAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

(d) The OAC shall expire on July 1, 2026.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 57. FISHERIES
SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §57.981, concerning Bag, Possession, and Length Limits, and the repeal of §57.983, concerning Spotted Seatrout - Special Provisions. The proposed amendment would alter the bag, possession, and length limits for spotted seatrout. The proposed repeal would eliminate a spotted seatrout harvest rule that expired on its own terms on August 31, 2023, and is no longer necessary.

In February of 2021, Winter Storm Uri caused a die-off of more than 3.8 million fish on the Texas Coast, with spotted seatrout mortality the highest reported among recreational game fish. An estimated 160,000 spotted seatrout were lost coastwide, with highest losses on the lower coast. On April 1, 2021, the department adopted an emergency rule (46 TexReg 2527) to protect seatrout populations by reducing harvest pressure, which had the additional benefit of accelerating recovery of spotted seatrout in the Laguna Madre system. The emergency rule expired on September 27, 2021. After post-freeze data analysis identified significant impacts in other coastal areas, the commission adopted new §57.983 (47 TexReg 1290) in January of 2022, which mirrored the provisions of the emergency rule (a three-fish daily bag limit, a minimum length limit of 17", and a maximum length limit of 23 inches, with no provision for the retention of oversize fish) but expanded its geographical extent. The new rule was intended to be temporary in nature; thus, it contained an expiration date of August 31, 2023.

Section 57.983 was intended to increase spotted seatrout spawning stock biomass and recruitment to the fishery as a means of recovery following the freeze event. According to modeled data that considers spotted seatrout life history, the full benefit of the rule would take approximately seven years to be realized. Departmental data show continued impact to adult spotted seatrout populations since 2021. Coastwide spring gillnet data shows that the spotted seatrout population remains below the ten-year mean (a decline from recent historical average) and lower coastwide following the freeze event. Despite this, coastwide bag seine data shows increasing recruitment since 2021 to pre-freeze levels.

While the recruitment trends are encouraging, the department continues to receive comment from the regulated community indicating lingering concerns over the long-term sustainability of the fishery and advocating to make permanent the more restrictive bag and length limits of expired §57.983.

Upon expiration of §57.983, the harvest regulation for spotted seatrout in §57.981 (five-fish daily bag limit, 15" minimum length limit, 25" maximum length limit, with one fish longer than 25" allowed to be retained as part of the daily bag limit) resumed effect.

To gauge public satisfaction with the current spotted seatrout fishery and gather angler preferences for future spotted seatrout management, six public scoping meetings were held in Port Arthur, Texas City, Port Lavaca, Rockport, Corpus Christi, and Port Isabel from October 17 to October 19, 2023. A total of 281 people attended the scoping meetings, and over 275 comments were received during the meetings as well as via email. Of the comments received, only 4% of respondents opposed any changes to current limits. Additionally, of respondents who specified a specific slot length, 39% were in favor of a 17"-23" slot and 29% favored a 15"-20" slot. Eighty-three percent of comments that specified a bag limit were in favor of a three- fish bag.

Additionally, the department contracted with Texas A&M University to conduct an online survey in September 2023 to gauge public satisfaction with the current spotted seatrout fishery. A stratified random sample size of 10,000 recreational anglers in 32 counties who held one of 22 different license types (all of which were license types that allow anglers to saltwater fish) made up the sample population. The distribution of surveyed anglers among the 32 counties was determined based on encounters at creel surveys that targeted spotted seatrout. The sample also included a census (1,584 individuals) who held an all-water fishing guide license. Of the completed surveys received from recreational anglers, most supported a 15"-20" slot, three- fish bag limit, with one fish over the maximum size allowed, while a 17"-23" slot, five-fish bag limit, with one fish over the maximum size allowed was least supported. Of the completed surveys received from fishing guides, most supported a 15"-20" slot, three-fish bag limit, with one fish over the maximum size allowed, while a 17"-23" slot, five-fish bag limit, with one fish over the maximum size allowed was least supported.

The department also analyzed long-term data to inform the proposed amendment. In 2020, the year before the freeze, approximately 50% of anglers who landed any seatrout landed just one seatrout. This trend was even more pronounced when the emergency regulation was in place, with approximately 67% of anglers landing just one seatrout. The department also evaluated angler satisfaction as it related to bag size between years with the emergency regulations and those without. This evaluation showed that while satisfaction is positively correlated with number of fish caught, the satisfaction of reaching the bag limit was similar regardless of the three fish or five fish bag limit.

Based on the harvest and population data and the input of the regulated community, the department proposes to alter the current harvest rule by implementing a reduced daily bag limit (from five fish to three fish), retaining the current minimum length limit of 15", reducing the maximum length limit to 20" from 25", and continuing to allow the retention of one fish longer than 25" as part of the daily bag limit. The proposed amendment would be implemented on a coastwide basis.

The proposed repeal is necessary to repeal a harvest rule that is unnecessary because it has expired on its own term.

Mr. Dakus Geeslin, Deputy Director, Coastal Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Geeslin also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state by protecting fisheries resources from depletion. In addition, the rule will increase the long-term sustainability of the resource, based on projected future impacts and expected changes to the fishery based on fishing pressure.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because spotted seatrout by statute cannot be harvested for commercial purposes and because the proposed rule regulates recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore does not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation, but will modify an existing regulation; not repeal, expand, or limit a regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rule is in compliance with Government Code, §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed amendment may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8734; e-mail: cfish@tpwd.texas.gov or via the department's website at http://www.tpwd.texas.gov/.

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment and repeal are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment and repeal affect Parks and Wildlife Code, Chapter 61.

§57.981. Bag, Possession, and Length Limits.

(a) - (b) (No change.)

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

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

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) - (N) (No change.)

(O) Seatrout, spotted.

(i) Daily bag limit: 3 [~~5~~].

(ii) Minimum length limit: 15 inches.

(iii) Maximum length limit: 20 [~~25~~] inches.

(iv) Only one spotted seatrout greater than 25 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.

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 December 11, 2023.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §57.983

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed repeal affects Parks and Wildlife Code, Chapter 61.

§57.983. Spotted Seatrout - Special Bag, Possession, and Length Limits.

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 December 11, 2023.

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James Murphy
General Counsel
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CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §65.81, concerning Containment Zones; Restrictions, and §65.82, concerning Surveillance Zones; Restrictions.

The proposed amendments would establish a chronic wasting disease (CWD) containment zone (CZ) in Coleman County and surveillance zones (SZs) in Kimble, Medina, Cherokee, Coleman, and Kerr counties in response to the continuing detection of CWD in deer breeding facilities, free-ranging populations, and a department research facility, and would heighten the department's surveillance efforts in those areas.

Chronic wasting disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently there is scientific evidence to suggest that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Center for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and recommend not consuming the meat of infected animals. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of management zones in areas where CWD has been confirmed. The purpose of those CWD zones is to better determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is

detected are absolutely critical to containing it on the landscape. Accordingly, the first step in the department's response to CWD detections is the timely establishment of management zones around locations where detection occurs. A CZ is "a department-defined geographic area in which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable." Designation of a CZ imposes mandatory carcass movement restrictions, and if the department imposes mandatory check stations, all deer harvested within a CZ must be presented at a check station unless otherwise authorized by the department in writing. A SZ is "a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected." Within a SZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at a department check station is required. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply.

Historically, when CWD has been detected in a deer breeding facility but not on any associated release sites, the department has considered the property on which the breeding facility is located to be a de facto CZ because it is surrounded by a fence capable of retaining deer at all times and is immediately subject to a quarantine and a herd plan administered by TAHC. In such cases, the department has designated only a SZ around the index facility. In cases where CWD is detected in a free-ranging deer or a release site associated with a positive facility, the department imposes a CZ.

The Texas Parks and Wildlife Commission has directed staff to develop guidelines or a standard operating procedure (SOP) with respect to the establishment and duration of SZs. The SOP distinguishes two scenarios: 1) the detection of CWD has been in a deer breeding facility but not at any release site associated with a breeding facility and 2) detection of CWD on a release site associated with a deer breeding facility where CWD has been detected. In the first scenario, the department will not establish a SZ if the following can be verified: 1) the disease was detected early (i.e., it has not been in the facility long); 2) the transmission mechanism and pathway are known; 3) the facility was promptly depopulated following detection; and 4) there is no evidence that free-ranging deer populations have been compromised. If any of these criteria is not satisfied, a SZ will be established, to consist of all properties that are wholly or partially located within two miles of the property containing the positive deer breeding facility. None of the discoveries necessitating this rulemaking satisfy all four criteria; thus, the department proposes the new surveillance zones described in this rulemaking.

On September 7, 2023, the department received confirmation that a six-year-old female white-tailed deer in a deer breeding facility located in Kimble County had been confirmed positive for CWD.

On October 19, 2023, the department received notification that a 14-month-old male white-tailed deer in a deer breeding facility located in Medina County was confirmed positive for CWD.

On November 14, 2023, the department received notification that a 4.4-year-old male white-tailed deer in a deer breeding facility located in Cherokee County was confirmed positive for CWD.

On December 6, 2023, department received notification that CWD was confirmed in a free-range 2.5-year-old male white-tailed deer taken by a hunter in Coleman County.

At the time this proposal was submitted to the *Texas Register* the department was awaiting confirmation of test results indicating that a 14-month-old male white-tailed deer in the department's research facility at the Kerr Wildlife Management Area in Kerr County was infected with CWD.

The proposed amendment to §65.81, concerning Containment Zones; Restrictions, would create a new CZ in Coleman County.

The proposed amendment to §65.82, concerning Surveillance Zones; Restrictions, would establish new surveillance zones in Kimble, Medina, Coleman, Cherokee, and Kerr counties. The department notes that the SZs will be removed when the department is satisfied that CWD has been contained and the risk of further spread is minimal. In the case of the suspected positive deer at the Kerr WMA, the department immediately euthanized and tested every deer at the facility. The department believes that imposition of a SZ is necessary because the transmission pathway and agent are unknown.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed is in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties and resources.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There could be adverse economic impact on persons required to comply with the rules as proposed. Such impacts would include any monetary and time costs incurred by persons transporting harvested deer to a department check station as required, which the department has estimated will be minimal.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

For the purposes of this analysis, the department considers all deer breeders to be small or microbusinesses, which ensures

that the analysis captures all deer breeders possibly affected by the proposed rulemaking.

The department has determined that there are no deer breeding facilities located within the proposed new CZ in Coleman County; therefore, there would be no direct adverse economic impacts to the regulated community (i.e., permitted deer breeders) as a result of the creation of the proposed CZ in Coleman County.

The department has determined that there will be no adverse economic impacts to deer breeding facilities located within the proposed SZs. Under current rule, a deer breeding facility that is both within a SZ and MQ (Movement Qualified, which is the authorization to transfer deer) may transfer to or receive breeder deer from any other MQ deer breeding facility in this state and deer from a MQ deer breeding facility located outside a SZ may be released within a SZ if authorized by Division 2 of this subchapter. Thus, the zone designations will not result in adverse economic impacts to any deer breeders in the new SZs, provided the breeding facility enjoys MQ designation by the department. The proposed amendments will not affect deer breeding facilities designated NMQ (Non-Movement Qualified) as they cannot transfer deer under the provisions of other rules currently in effect.

To the extent that rules affect licensed hunters (by imposing check station and carcass movement restrictions), the department has determined that those components of the proposed rules involve regulation of various aspects of recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has determined that the proposed rule will not affect rural communities because the rule does not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not result in direct impacts to local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed new rule. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; expand an existing regulation (by creating new areas subject to the rules governing CZs and SZs), but will otherwise not limit or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Alan Cain, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (830) 480-4038 (e-mail: alan.cain@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.81. Containment Zones; Restrictions.

The areas described in paragraph (1) of this section are CZs and the provisions of this subchapter applicable to CZs apply on all properties lying wholly or partially within the described areas.

(1) Containment Zones.

(A) - (H) (No change.)

(I) Containment Zone 9. Containment Zone 9 is that portion of Coleman County lying within the area described by the following latitude-longitude coordinate pairs: -99.29788709910, 32.00897313890; -99.29703740030, 32.00896493620; -99.29618783980, 32.00894951920; -99.29533850200, 32.00892688930; -99.29448947120, 32.00889704890; -99.29364083180, 32.00886000100; -99.29279266820, 32.00881574910; -99.29194506470, 32.00876429770; -99.29109810550, 32.00870565190; -99.29025187470, 32.00863981760; -99.28940645660, 32.00856680120; -99.28856193500, 32.00848661010; -99.28771839390, 32.00839925210; -99.28687591720, 32.00830473610; -99.28603458850, 32.00820307130; -99.28519449140, 32.00809426790; -99.28435570960, 32.00797833670; -99.28351832620, 32.00785528910; -99.28268242450, 32.00772513760; -99.28184808760, 32.00758789480; -99.28101539840, 32.00744357460; -99.28018443960, 32.00729219130; -99.27935529370, 32.00713375980; -99.27852804330, 32.00696829590; -99.27770277040, 32.00679581620; -99.27687955710, 32.00661633760; -99.27605848520, 32.00642987810; -99.27523963620, 32.00623645610; -99.27442309150, 32.00603609100; -99.27360893220, 32.00582880250; -99.27279723930, 32.00561461130; -99.27198809330, 32.00539353880; -99.27118157460, 32.00516560670; -99.27037776340, 32.00493083790; -99.26957673960, 32.00468925550; -99.26877858260, 32.00444088370; -99.26798337180, 32.00418574710; -99.26719118620, 32.00392387110; -99.26640210440, 32.00365528160; -99.26561620490, 32.00338000540; -99.26483356570, 32.00309806980; -99.26405426460, 32.00280950280;

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(J) [(I)] Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs and the provisions of this subchapter applicable to SZs apply on all properties lying wholly or partially within the described areas.

(1) Surveillance Zones.

(A) - (V) (No change.)

(W) Surveillance Zone 23. Surveillance Zone 23 is that portion of Kimble County lying within the area described by the following latitude/longitude pairs: -99.95180989610, 30.29840729940; -99.95400264050, 30.29847039980; -99.95618594120, 30.29865777320; -99.95835045740, 30.29896861810; -99.96048692840, 30.29940160460; -99.96258621300, 30.29995488020; -99.96463932900, 30.30062607780; -99.96663749090, 30.30141232570; -99.96857214790, 30.30231025990; -99.96983623480, 30.30299275490; -99.97667133030, 30.30295620500; -99.97688605840, 30.30295564740; -99.97907892310, 30.30301831650; -99.98126237610, 30.30320526070; -99.98342707600, 30.30351568000; -99.98556376120, 30.30394824650; -99.98766328980, 30.30450110940; -99.98971667820, 30.30517190350; -99.99171514010, 30.30595775880; -99.99365012330, 30.30685531280; -99.99551334660, 30.30786072530; -99.99729683530, 30.30896969430; -99.99899295480, 30.31017747450; -100.00059444400, 30.31147889770; -100.00209444500, 30.31286839470; -100.00348653500, 30.31434001930; -100.00476475000, 30.31588747340; 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30.38850142390; -99.85429040200, 30.38764797600; -99.85405994970, 30.38727300580; -99.85337346210, 30.38598353140; -99.85281357470, 30.38486057590; -99.85259642610, 30.38441489860; -99.85182566770, 30.38263221670; -99.85119106570, 30.38080964370; -99.85069533050, 30.37895498630; -99.85034057710, 30.37707618790; -99.85012831660, 30.37518129510; -99.85005944960, 30.37327842280; -99.85013426230, 30.37137571970; -99.85035242600, 30.36948133310; -99.85071299810, 30.36760337440; -99.85121442640, 30.36574988410; -99.85176446020, 30.36416114500; -99.85459723080, 30.35675198120; -99.85468731280, 30.35651963180; -99.85546328330, 30.35473872900; -99.85637186830, 30.35300564650; -99.85740917180, 30.35132780280; -99.85857074690, 30.34971237970; -99.85985161610, 30.34816629120; -99.86047057360, 30.34748954550; -99.86049982450, 30.34745852080; -99.86052178950, 30.34742326130; -99.86100495000, 30.34667428600; -99.86216640830, 30.34505883080; -99.86344715740, 30.34351270700; -99.86373981000, 30.34318754740; -99.86408949780, 30.34280464130; -99.86519138940, 30.34165962250; -99.86535734670, 30.34149711410; -99.86574783710, 30.34111759830; -99.86708424150, 30.33989216350; -99.86837905370, 30.33882977010; -99.86854522780, 30.33870050260; -99.86857268570, 30.33867483580; -99.86856615910, 30.33840357450; -99.86854991850, 30.33733178010; -99.86854704550, 30.33691486320; -99.86862146340, 30.33501215620; -99.86883917940, 30.33311774490; -99.86889510360, 30.33276880930; -99.86917243380, 30.33111199960; -99.86947657360, 30.32958293080; -99.86997744090, 30.32772937400; -99.87061696100, 30.32590820030; -99.87139238830, 30.32412720630; -99.87230039590, 30.32239401590; -99.87333709000, 30.32071604810; -99.87449802660, 30.31910048510; -99.87553862390, 30.31784364590; -99.87612434800, 30.31649807390; -99.87703219800, 30.31476485130; -99.87806872700, 30.31308684650; -99.87922949170, 30.31147124180; -99.88050951780, 30.30992495220; -99.88190332120, 30.30845459570; -99.88340493190, 30.30706646470; -99.88500791910, 30.30576649980; -99.88670541930, 30.30456026400; -99.88849016520, 30.30345291870; -99.89035451680, 30.30244920230; -99.89229049470, 30.30155340960; -99.89428981340, 30.30076937330; -99.89634391710, 30.30010044800; -99.89844401630, 30.29954949570; -99.90058112510, 30.29911887350; -99.90274609970, 30.29881042390; -99.90492967750, 30.29862546640; -99.90696497240, 30.29856499870; -99.95165235240, 30.29840756090; and -99.95180989610, 30.29840729940.

(X) Surveillance Zone 24. Surveillance Zone 24 is that portion of Medina County lying within the area described by the following latitude/longitude pairs: -99.03678558950, 29.25833376500; -99.03895416000, 29.25841257850; -99.04111221690, 29.25861555820; -99.04325052700, 29.25894183550; -99.04535994180, 29.25939001470; -99.04743143580, 29.25995817830; -99.04945614540, 29.26064389550; -99.05142540670, 29.26144423250; -99.05333079230, 29.26235576510; -99.05516414760, 29.26337459310; -99.05691762550, 29.26449635730; -99.05858371990, 29.26571625760; -99.06015529780, 29.26702907400; -99.06162562980, 29.26842918870; -99.06298841910, 29.26991060990; -99.06423782830, 29.27146699770; -99.06536850430, 29.27309169090; -99.06637560160, 29.27477773590; -99.06725480300, 29.27651791570; -99.06800233790, 29.27830478160; -99.06861499890, 29.28013068420; -99.06909015550, 29.28198780700; -99.06942576550, 29.28386819900; -99.06962038370, 29.28576380930; -99.06967316860, 29.28766652120; -99.06967243770, 29.28773353440; -99.06967074480, 29.28787205090; -99.06988063470, 29.28904794430; -99.07007527220, 29.29094355800; -99.07012806890, 29.29284627390; -99.07012645850, 29.29297847060; -99.07008760380, 29.29560823030; -99.06999993240, 29.29737770600; -99.06976894550, 29.29927018960; -99.06939723430, 29.30114537960; -99.06888638290, 29.30299524470; -99.06823857120, 29.30481186180; -99.06745656650, 29.30658744970; -99.06654371130, 29.30831440260; -99.06550390900, 29.30998532240; -99.06434160790, 29.31159305070; -99.06306178140, 29.31313069970; -99.06166990750, 29.31459168120; -99.06017194480, 29.31596973540; -99.05857430750, 29.31725895740; -99.05688383750, 29.31845382270; -99.05510777560, 29.31954921100; -99.05336743140, 29.32048377070; -99.05333543510, 29.32049978770; -99.05330860080, 29.32052191870; -99.05223193030, 29.32137180000; -99.05054131050, 29.32256658240; -99.04876510160, 29.32366188340; -99.04691091230, 29.32465300910; -99.04498668650, 29.32553571200; -99.04300066870, 29.32630620910; -99.04096136910, 29.32696119810; -99.03887752640, 29.32749787200; -99.03675807120, 29.32791393040; -99.03461208670, 29.32820759020; -99.03244877050, 29.32837759260; -99.03106128140, 29.32842111610; -99.02932843750, 29.32844366930; -99.02877504050, 29.32844682360; -99.02681052820, 29.32844364980; -99.02658003800, 29.32844257420; -99.02308778620, 29.32841559840; -99.02091766270, 29.32833650980; -99.01875809610, 29.32813317880; -99.01661834220, 29.32780647680; -99.01450757170, 29.32735780410; -99.01243483060, 29.32678908390; -99.01040900150, 29.32610275350; -99.00843876560, 29.32530175460; -99.00653256510, 29.32438951990; -99.00469856720, 29.32336995920; -99.00294462890, 29.32224744170; -99.00175050700, 29.32137271610; -99.00127811350, 29.32118062020; -98.99937206150, 29.32026827900; -98.99753821680, 29.31924861600; -98.99578443600, 29.31812600090; -98.99411823140, 29.31690524460; -98.99254673950, 29.31559157820; -98.99107669010, 29.31419063100; -98.98971437750, 29.31270840580; -98.98846563340, 29.31115125340; -98.98733580250, 29.30952584540; -98.98632971890, 29.30783914540; -98.98545168610, 29.30609837920; -98.98470545840, 29.30431100390; -98.98409422480, 29.30248467580; -98.98362059570, 29.30062721750; -98.98328659170, 29.29874658460; -98.98309363510, 29.29685083140; -98.98304254390, 29.29494807650; -98.98306949550, 29.29237800430; -98.98316047730, 29.29047639780; -98.98339313330, 29.28858408030; -98.98376645910, 29.28670915410; -98.98427884810, 29.28485964670; -98.98492809890, 29.28304347620; -98.98571142440, 29.28126841770; -98.98662546410, 29.27954206950; -98.98766629860, 29.27787182120; -98.98882946630, 29.27626482200; -98.99010998280, 29.27472794980; -98.99150236230, 29.27326778210; -98.99300064080, 29.27189056780; -98.99459840210, 29.27060220060; -98.99628880510, 29.26940819350; -98.99804061290, 29.26831365590; -98.99991822420, 29.26732327120; -99.00184170520,

29.26644127690; -99.00382682410, 29.26567144660; -99.00586508600, 29.26501707430; -99.00794776900, 29.26448095940; -99.01006596180, 29.26406539580; -99.01162613110, 29.26383960890; -99.01179748320, 29.26381847520; -99.01196770780, 29.26379122190; -99.01362891870, 29.26356323280; -99.01364637160, 29.26356123330; -99.01366080440, 29.26355239920; -99.01446528390, 29.26307518830; -99.01631862760, 29.26208456480; -99.01824185560, 29.26120232240; -99.02022673720, 29.26043223590; -99.02226477830, 29.25977760010; -99.02434725820, 29.25924121580; -99.02646526630, 29.25882537770; -99.02860974060, 29.25853186500; -99.03077150600, 29.25836193330; -99.03282370140, 29.25831559100; -99.03666797700, 29.25833304980; and -99.03678558950, 29.25833376500.

(Y) Surveillance Zone 25. Surveillance Zone 25 is that portion of Cherokee County lying within the area described by the following latitude/longitude pairs: -95.16551813760, 31.88499767200; -95.16585785040, 31.88501179520; -95.16883776280, 31.88514836070; -95.17072236840, 31.88527950140; -95.17293080210, 31.88554853500; -95.17511390170, 31.88594019510; -95.17726232710, 31.88645280610; -95.17936688570, 31.88708417460; -95.18141857260, 31.88783159950; -95.18340860800, 31.88869188260; -95.18532847560, 31.88966134300; -95.18716995850, 31.89073583260; -95.18892517440, 31.89191075370; -95.19058660920, 31.89318107840; -95.19214714940, 31.89454137080; -95.19360011230, 31.89598580950; -95.19493927480, 31.89750821270; -95.19615889990, 31.89910206470; -95.19725376150, 31.90076054380; -95.19821916660, 31.90247655120; -95.19905097560, 31.90424274160; -95.19974562040, 31.90605155420; -95.20030011920, 31.90789524570; -95.20071208980, 31.90976592290; -95.20097975990, 31.91165557650; -95.20110197480, 31.91355611550; -95.20107820230, 31.91545940210; -95.20090853530, 31.91735728590; -95.20059369180, 31.91924163940; -95.20013501150, 31.92110439250; -95.19953445040, 31.92293756700; -95.19915728340, 31.92389976250; -95.19815357340, 31.92631908540; -95.19779084440, 31.92715263060; -95.19691477030, 31.92890324420; -95.19590628340, 31.93060123560; -95.19476969690, 31.93223933070; -95.19350987350, 31.93381051170; -95.19213220490, 31.93530804740; -95.19064258830, 31.93672552140; -95.18904740160, 31.93805686040; -95.18735347570, 31.93929635960; -95.18556806570, 31.94043870790; -95.18369881940, 31.94147900990; -95.18175374480, 31.94241280770; -95.17974117550, 31.94323609950; -95.17766973520, 31.94394535700; -95.17554830050, 31.94453754050; -95.17338596280, 31.94501011200; -95.17119198940, 31.94536104630; -95.16897578340, 31.94558883920; -95.16674684340, 31.94569251440; -95.16451472300, 31.94567162760; -95.16228898930, 31.94552626830; -95.16007918180, 31.94525705950; -95.15789477180, 31.94486515490; -95.15574512140, 31.94435223440; -95.15363944330, 31.94372049610; -95.15292604870, 31.94347588710; -95.15225794440, 31.94323930920; -95.15201777130, 31.94315426200; -95.15112625370, 31.94283856320; -95.14978698470, 31.94233530500; -95.14779612430, 31.94147452330; -95.14587558800, 31.94050452620; -95.14403360410, 31.93942947040; -95.14227806340, 31.93825396290; -95.14061648540, 31.93698304090; -95.13905598640, 31.93562215030; -95.13760324830, 31.93417712230; -95.13626449070, 31.93265414830; -95.13504544390, 31.93105975340; -95.13395132440, 31.92940076830; -95.13298681290, 31.92768430020; -95.13215603390, 31.92591770210; -95.13146253880, 31.92410854130; -95.13090928990, 31.92226456710; -95.13049864870, 31.92039367750; -95.13023236530, 31.91850388500; -95.13020804960, 31.91825324460; -95.13003171160, 31.91633466000; -95.12993523850, 31.91468469710; -95.12996044570, 31.91278142340; -95.13013153130, 31.91088362950; -95.13044775380, 31.90899944150; -95.13090775080, 31.90713692680; -95.13150954440, 31.90530405940; -95.13225054990, 31.90350868610; -95.13312758760, 31.90175849270; -95.13413689570, 31.90006097120; -95.13527414690, 31.89842338770; -95.13653446720, 31.89685275140; -95.13791245650, 31.89535578460; -95.13940221190, 31.89393889410; -95.14099735310, 31.89260814350; -95.14269104970, 31.89136922770; -95.14447605040, 31.89022744850; -95.14634471390, 31.88918769150; -95.14828904190, 31.88825440580; -95.15030071320, 31.88743158490; -95.15237111880, 31.88672274930; -95.15449139950, 31.88613093190; -95.15665248290, 31.88565866480; -95.15884512270, 31.88530796850; -95.16105993790, 31.88508034340; -95.16328745280, 31.88497676360; and -95.16551813760, 31.88499767200.

(Z) Surveillance Zone 26. Surveillance Zone 26 is that portion of the state within the boundaries of a line beginning at the intersection of U.S. Highway 283 and County Road 176 in Coleman County; thence east along County Road 176 to State Highway (S.H.) 206; thence east along S.H. 206 to County Road 170; thence south along County Road 170 to County Road 171; thence south along C.R. 171 to County Road 113 in Brown County; thence south along C.R. 113 to Farm to Market (F.M.) 585; thence south along F.M. 585 to County Road 108 in Brown County; thence southwest along C.R. 108 to County Road 127 in Coleman County; thence southwest along C.R. 127 to F.M. 568; thence west along F.M. 568 to U.S. Highway 84, thence north along U.S. 84 to S.H. 206, thence north along S.H. 206 to U.S. 283; thence north along U.S. 283 to County Road 176.

(AA) Surveillance Zone 27. Surveillance Zone 27 is that portion of Kerr County lying within the area described by the following latitude/longitude pairs: -99.49647162940, 30.02770889890; -99.49824552350, 30.02775690180; -99.49830569430, 30.02775992230; -99.49871806180, 30.02778284750; -99.50089431900, 30.02797800800; -99.50297295750, 30.02828277980; -99.50309565760, 30.02830425070; -99.50317396090, 30.02831803740; -99.50530236000, 30.02875862920; -99.50730312340, 30.02929252710; -99.50738500030, 30.02931683920; -99.50747498600, 30.02934368350; -99.50951914000, 30.03002217560; -99.51061645670, 30.03044292600; -99.51072350650, 30.03048598300; -99.51150839620, 30.03081401840; -99.51296305660, 30.03044505100; -99.51509590270, 30.03002091120; -99.51725604750, 30.02971902230; -99.51943424900, 30.02954067590; -99.52077798120, 30.02949271250; -99.52091216150, 30.02949027300; -99.52104594720, 30.02948099930; -99.52165876700, 30.02944344480; -99.52384570280, 30.02938936570; -99.52450410370, 30.02939747200; -99.52894164830, 30.02949005750; -99.53046957150, 30.02955235550; -99.53264593290, 30.02974697250; -99.53480301930, 30.03006499250; -99.53693160180, 30.03050505490; -99.53902257280, 30.03106527720; -99.54106698570, 30.03174326230; -99.54305609220, 30.03253610950;

-99.54498138020, 30.03344042670; -99.54683461000, 30.03445234450; -99.54860784950, 30.03556753320; -99.55029350800, 30.03678122080; -99.55188436880, 30.03808821390; -99.55337362030, 30.03948291950; -99.55475488440, 30.04095936890; -99.55602224480, 30.04251124360; -99.55717027160, 30.04413190160; -99.55804192810, 30.04554681180; -99.55805355100, 30.04556699700; -99.55807216180, 30.04558273010; -99.55850813980, 30.04595812090; -99.55999760900, 30.04735275110; -99.56137908770, 30.04882913080; -99.56264665850, 30.05038094180; -99.56379489070, 30.05200154240; -99.56481886360, 30.05368399640; -99.56571418760, 30.05542110240; -99.56647702310, 30.05720542450; -99.56710409720, 30.05902932460; -99.56759271740, 30.06088499440; -99.56794078400, 30.06276448930; -99.56814679820, 30.06465976220; -99.56820998580, 30.06653289410; -99.56816313140, 30.08068881160; -99.56816301520, 30.08071861560; -99.56808285260, 30.08262107080; -99.56785978230, 30.08451489340; -99.56749475140, 30.08639197300; -99.56698931480, 30.08824427060; -99.56634562940, 30.09006385250; -99.56556644450, 30.09184292490; -99.56465509040, 30.09357386710; -99.56361546400, 30.09524926400; -99.56245201260, 30.09686193830; -99.56116971450, 30.09840498080; -99.55977405810, 30.09987178030; -99.55827101810, 30.10125605230; -99.55666703040, 30.10255186520; -99.55496896400, 30.10375366640; -99.55318409210, 30.10485630590; -99.55139957510, 30.10581245560; -99.55137817210, 30.11845109990; -99.55137793320, 30.11852623840; -99.55129740700, 30.12042869560; -99.55107391860, 30.12232250140; -99.55070841650, 30.12419954530; -99.55020245790, 30.12605178840; -99.54955820180, 30.12787129730; -99.54877840000, 30.12965027860; -99.54786638540, 30.13138111180; -99.54682605780, 30.13305638250; -99.54566186740, 30.13466891370; -99.54437879570, 30.13621179690; -99.54298233440, 30.13767842180; -99.54147846170, 30.13906250430; -99.53987361700, 30.14035811380; -99.53817467310, 30.14155969860; -99.53638890690, 30.14266210960; -99.53452396810, 30.14366062260; -99.53258784640, 30.14455095850; -99.53058883740, 30.14532930160; -99.52853550690, 30.14599231610; -99.52643665390, 30.14653716040; -99.52430127310, 30.14696149940; -99.52213851630, 30.14726351430; -99.51995765280, 30.14744191080; -99.51776802970, 30.14749592420; -99.51709718750, 30.14748753770; -99.51703411360, 30.14748619950; -99.51646674700, 30.14778984610; -99.51453037500, 30.14867990790; -99.51253113400, 30.14945796790; -99.51047759080, 30.15012069160; -99.50837854530, 30.15066523850; -99.50624299320, 30.15108927490; -99.50408008690, 30.15139098320; -99.50189909630, 30.15156907040; -99.49970936900, 30.15162277320; -99.49837973010, 30.15159457820; -99.49400976800, 30.15142627440; -99.48190149650, 30.15132813450; -99.47986969210, 30.15125788010; -99.47769068720, 30.15106235540; -99.47553107530, 30.15074335950; -99.47340011220, 30.15030225960; -99.47130693070, 30.14974094620; -99.46926050110, 30.14906182510; -99.46726959290, 30.14826780680; -99.46534273690, 30.14736229440; -99.46348818900, 30.14634916850; -99.46171389420, 30.14523277090; -99.46002745310, 30.14401788560; -99.45843608880, 30.14270971880; -99.45694661620, 30.14131387590; -99.45556541280, 30.13983633790; -99.45429839150, 30.13828343550; -99.45315097500, 30.13666182200; -99.45212807280, 30.13497844480; -99.45123406050, 30.13324051540; -99.45047276060, 30.13145547870; -99.44984742670, 30.12963098100; -99.44936072950, 30.12777483710; -99.44901474540, 30.12589499690; -99.44881094790, 30.12399951140; -99.44875020140, 30.12209649800; -99.44875066670, 30.12203038510; -99.44927964890, 30.05860910110; -99.44936167540, 30.05677284260; -99.44958701310, 30.05487923860; -99.44995422400, 30.05300250930; -99.45046172770, 30.05115069000; -99.45110734330, 30.04933170860; -99.45188829940, 30.04755335220; -99.45280124530, 30.04582323350; -99.45384226620, 30.04414875830; -99.45500689960, 30.04253709380; -99.45629015480, 30.04099513800; -99.45768653390, 30.03952949030; -99.45919005590, 30.03814642310; -99.46079428200, 30.03685185500; -99.46249234330, 30.03565132610; -99.46427697020, 30.03454997330; -99.46614052350, 30.03355250930; -99.46807502690, 30.03266320210; -99.47007220130, 30.03188585670; -99.47212350030, 30.03122379900; -99.47422014630, 30.03067986160; -99.47635316820, 30.03025637170; -99.47851343960, 30.02995514100; -99.48069171820, 30.02977745840; -99.48204117710, 30.02972980300; -99.48403365890, 30.02969446720; -99.48522532200, 30.02930970500; -99.48528697370, 30.02929183060; -99.48548195530, 30.02923548330; -99.48751683170, 30.02870920130; -99.48814285310, 30.02857155060; -99.48825394840, 30.02854811310; -99.48976084600, 30.02826204970; -99.49087759570, 30.02809045570; -99.49100423560, 30.02807291790; -99.49204767040, 30.02794305250; -99.49422587840, 30.02776513810; -99.49454419990, 30.02774957950; -99.49460303800, 30.02774694840; and -99.49647162940, 30.02770889890.

(BB) [(W)] Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (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 December 11, 2023.

TRD-202304678
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 25. SAFETY RESPONSIBILITY REGULATIONS

37 TAC §25.8

The Texas Department of Public Safety (the department) proposes an amendment to §25.8, concerning Reinstatement. The proposed amendment implements House Bill 3224, 88th Leg., R.S. (2023), by removing the reference to reinstating a suspended motor vehicle registration because the bill removed the ability to suspend a motor vehicle registration for a second conviction of failure to establish financial responsibility, and only a driver license may be suspended under that circumstance.

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 that a second conviction for failure to establish financial responsibility will not result in the suspension of vehicle registration.

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 rulemaking does increase or decrease the number of individuals subject to its 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 the proposal may be submitted to Cynthia Allison, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* 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 Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code and Texas Transportation Code §601.021, which authorizes the department to administer and enforce Chapter 601 of the Texas Transportation Code.

Texas Government Code, §411.004(3); Texas Transportation Code, §521.005; and §601.021, are affected by this proposal.

§25.8. Reinstatement.

When a party's license is [~~and/or registrations have been~~] suspended, and proof of financial responsibility is a prerequisite for withdrawal of such suspension, a statutory reinstatement fee will be required prior to renewal or issuance of a license [~~and/or registrations~~]. When a party's license is [~~and/or registrations are~~] suspended in several cases and proof of financial responsibility is required in each case, only one statutory reinstatement fee will be required prior to renewal or issuance of a license.

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 December 8, 2023.

TRD-202304634
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 424-5848

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CHAPTER 36. METALS RECYCLING ENTITIES
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 implement changes made in rule §36.11 and in Senate Bill 224, 88th Leg., R.S. (2023), amending Occupations Code, Chapter 1956, Metal Recycling Entities.

The department previously proposed amendments to §36.60 in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5011) and accepted comments through October 9, 2023. Written comments were submitted by Carol Alvarado, Texas State Senator, District 6, Jeff Leach, Texas State Representative, District 67, and Steve Bresnen, on behalf of PGM of Texas, all of whom expressed concerns that the administrative penalties proposed were not consistent with Senate Bill 224, which provided

for harsher penalties of fines up to $10,000 to deter criminals and businesses from engaging in illegal activities related to catalytic converters. In response to these comments the department withdrew the previously published proposal and is now reintroducing it with increased penalties relating to certain catalytic converter transactions.

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 December 11, 2023.

TRD-202304672
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 424-5848

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PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

37 TAC §215.13

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §215.13, Risk Assessment. This proposed amended rule allows for a training provider's licensing exam passing rate to be calculated across all exam attempts, instead of only first attempts by students.

Mr. John P. Beauchamp, Interim Executive Director, has determined that for each year of the first five years this proposed

amended rule will be in effect, there will be no effect on state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by encouraging further educational support for students while continuing to maintain minimum standards for licensing examinations. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no anticipated costs to small businesses, microbusinesses, or individuals as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register.* Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

The amended rule as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

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

§215.13. Risk Assessment.

(a) A training provider may be found at risk and placed on at-risk probationary status if:

(1) for those providing licensing courses, the passing rate on a licensing exam for <u>all</u> [~~first~~] attempts for any three consecutive state fiscal years is less than 80 percent of the students attempting the licensing exam;

(2) courses taught by academic alternative providers are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) commission required learning objectives are not taught;

(4) lesson plans for classes conducted are not on file;

(5) examination and other evaluative scoring documentation is not on file;

(6) the training provider submits false reports to the commission;

(7) the training provider makes repeated errors in reporting;

(8) the training provider does not respond to commission requests for information;

(9) the training provider does not comply with commission rules or other applicable law;

(10) the training provider does not achieve the goals identified in its application for a contract;

(11) the training provider does not meet the needs of the officers and law enforcement agencies served; or

(12) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A training provider may be found at risk and placed on at-risk probationary status if:

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section;

(2) lesson plans for classes conducted are not on file;

(3) examination and other evaluative scoring documentation is not on file;

(4) the provider submits false reports to the commission;

(5) the provider makes repeated errors in reporting;

(6) the provider does not respond to commission requests for information;

(7) the provider does not comply with commission rules or other applicable law;

(8) the provider does not achieve the goals identified in its application for a contract;

(9) the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk and placed on at-risk probationary status if:

(1) the academic alternative provider fails to comply with the passing rates in subsection (a)(1) of this section;

(2) courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) the commission required learning objectives are not taught;

(4) the program submits false reports to the commission;

(5) the program makes repeated errors in reporting;

(6) the program does not respond to commission requests for information;

(7) the program does not comply with commission rules or other applicable law;

(8) the program does not achieve the goals identified in its application for a contract;

(9) the program does not meet the needs of the students and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The chief administrator of the sponsoring organization, or the training coordinator, shall report to the commission the progress toward compliance within the timelines provided in the management response as provided in subsection (d) of this section.

(f) The commission shall place providers found at-risk on probationary status for one year. If the provider remains at-risk after a 12-month probationary period, the commission shall begin the revocation process. If a provider requests a settlement agreement, the commission may enter into an agreement in lieu of revocation.

(g) A training or educational program placed on at-risk probationary status must notify all students and potential students of their at-risk status.

(h) The effective date of this section is February 1, 2016.

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 December 11, 2023.

TRD-202304673
John Beauchamp
Interim Executive Director
Texas Commission on Law Enforcement
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 936-7700

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CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §218.3, Legislatively Required Continuing Education for Licensees. This proposed amended rule conforms with the amendments made to Texas Occupations Code §1701.253(q) and §1701.3525 made by Senate Bill 1852 (88R).

Mr. John P. Beauchamp, Interim Executive Director, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effect on state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.253 and §1701.3525 to require active shooter response training for law enforcement personnel. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no anticipated cost to small businesses, microbusinesses, or individuals as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register.* Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.253, School Curriculum, §1701.3525, Active Shooter Response Training Required for Officers, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

The amended rule as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.253, School Curriculum, §1701.3525, Active Shooter Response Training Required for Officers, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

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

§218.3. Legislatively Required Continuing Education for Licensees.

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years)

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit. Peace officers shall complete not less than 16 hours of training on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University-San Marcos.

(2) Telecommunicators shall complete at least 20 hours of continuing education to include cardiopulmonary resuscitation training.

(c) Each training cycle (4 years)

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable.

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270), within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065), within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is June 1, 2022.

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 December 11, 2023.

TRD-202304676
John Beauchamp
Interim Executive Director
Texas Commission on Law Enforcement
Earliest possible date of adoption: January 21, 2024
For further information, please call: (512) 936-7700

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CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.46

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §221.46 concerning Active Shooter Training for Schools. This proposed new rule conforms with the addition of Texas Occupations Code §1701.2515 made by Senate Bill 999 (88R).

Mr. John P. Beauchamp, Interim Executive Director, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effect on state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.2515 to establish requirements to obtain a certificate to provide active shooter training to peace officers of students or employees at a public primary school, public secondary school, or institution of higher education. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no anticipated cost to small businesses, microbusinesses, or individuals as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.2515, Certificate Required to Provide Active Shooter Training at Public Schools and Institutions of Higher Education, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

The new rule as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.2515, Certificate Required to Provide Active Shooter Training at Public Schools and Institutions of Higher Education, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

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

§221.46. Active Shooter Training for Schools.

(a) To qualify for an Active Shooter Training Instructor certificate under Texas Occupations Code § 1701.2515, an individual must possess a current TCOLE Instructor Proficiency Certificate, complete an active shooter training instructor course approved by the commission, and complete any required application. The certificate expires two years from the date of issuance. An individual may apply for renewal of the certificate by providing proof the applicant has completed eight hours of continuing education related to law enforcement response to active shooter events.

(b) To qualify as an Active Shooter Training Provider under Texas Occupations Code § 1701.2515, a training provider must complete an application and show proof that the training provider employs appropriate training staff that possess a current Active Shooter Training Instructor certificate described in subsection (a) of this section. The certificate expires two years from the date of issuance.

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 December 11, 2023.

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John Beauchamp
Interim Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7700

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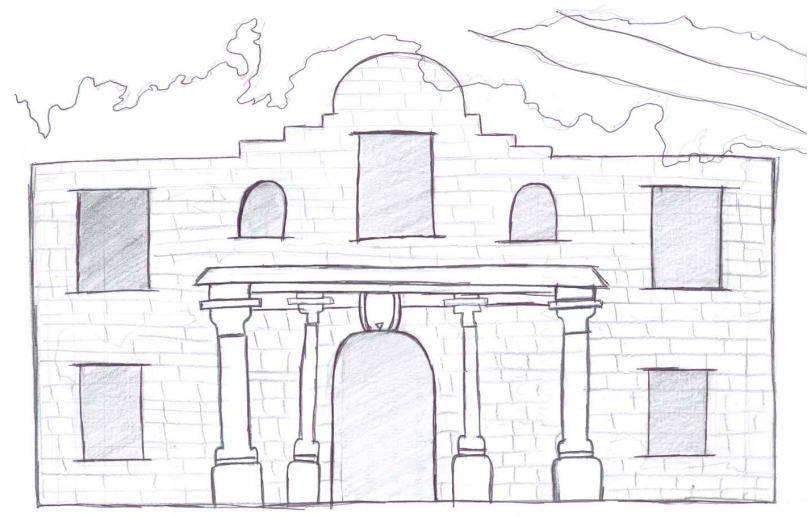

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036).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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP) including Subchapter A, Definitions, Threshold Requirements and Competitive Scoring; Subchapter B, Site and Development Requirements and Restrictions; Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules; Subchapter D, Underwriting and Loan Policy; Subchapter E, Fee Schedule, Appeals, and Other Provisions, and Subchapter F Supplemental Housing Tax Credits, §§11.1 - 11.10, 11.101, 11.201 - 11.207, 11.301 - 11.306, 11.901 - 11.907, and 11.1001 - 11.1009 without changes to the text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5249). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous adoption of the subchapters in 10 TAC Chapter 11, the Qualified Allocation Plan, in order to better address the requirements of Tex Gov't Code Ch. 2306 Subchapter DD.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The proposed repeal does not contemplate nor authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 22, 2023, to October 13, 2023 to receive stakeholder comment on the repealed section. No comments on the repeal were received.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

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

Except as described herein the adopted repealed sections affect no other code, article, or statute.

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

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 31, 2023
Proposal publication date: September 22, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

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

Except as described herein the proposed repealed sections affect no other code, article, or statute.

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

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Executive Director
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For further information, please call: (512) 475-3959

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

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

Except as described herein the repealed sections affect no other code, article, or statute.

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

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

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

Except as described herein the repealed sections affect no other code, article, or statute.

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

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

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

Except as described herein the repealed sections affect no other code, article, or statute.

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

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For further information, please call: (512) 475-3959

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SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1009

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

Except as described herein the repealed sections affect no other code, article, or statute.

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

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 31, 2023
Proposal publication date: September 22, 2023
For further information, please call: (512) 475-3959

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CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). This chapter is comprised of subchapter A, §§11.1 - 11.10; subchapter B, §11.101; subchapter C, §§11.201 - 11.207; subchapter D, §§11.301 - 11.306; subchapter E, §§11.901 - 11.907; and Subchapter F §§11.1001 - 11.1009 with changes to the text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5251). The rules will be republished. The purpose of the adopted new subchapters is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: clarify multiple definitions; update the Program Calendar; introduce a new tenant-focused tie breaker; revise underserved area and opportunity index so more potential Development sites will be competitive; increase Eligible building costs to respond to inflation; create a new scoring item to incentivize larger developments; eliminate Experience Certificates; Add automatic High-Quality Pre-Kindergarten awards for specified regions of the State; and provide for the use of 2024 State Housing Tax Credits.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tex. Gov't Code §2306.67022. The Department has analyzed this adopted rulemaking and the analysis is described below for each category of analysis performed.

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

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

1. The adopted rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

2. The adopted new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The adopted rule changes do not require additional future legislative appropriations.

4. The rule changes will not result in any increases or decreases in fees.

5. The adopted rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The adopted rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the adopted rule has sought to clarify Application requirements.

Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2023 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022.

7. The adopted rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The adopted rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this adopted rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between $50,000 and $60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The adopted rules do not, on

average, result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the adopted rule for which the economic impact of the rule may range from $480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of $10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,376 rural communities potentially subject to the adopted rule for which the economic impact of the rule is projected to be $0. The adopted rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the adopted rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. Other than the fees mentioned in section a4 above, there is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between $50,000 and $60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The adopted rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. Any state fiscal impact created by the introduction of State Housing Tax Credits (addressed in subchapter F of the adopted rule) was detailed by the Legislative Budget Board in its Fiscal Note on HB 1058, dated May 23, 2023. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 22, 2023, to October 13, 2023, to receive stakeholder comment on the repealed section. No comments on the repeal were received. Staff received written comments from 79 commenters by the deadline. Staff has reviewed all comments and provided a reasoned response to these comments as follows this preamble.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 22, 2023, to October 13, 2023, to receive stakeholders comment on the new proposed sections. Comment was received from 79 commenters as listed below: (1) Senator Morgan LaMantia, (2) Representative Hugh Shine, (3) Rep-

resentative Carl Tepper, (4) TAAHP, (5) JES Development, (6) Lakewood, (7) Partners in Community Development, (8) Blazer, (9) McCormack Baron Salazar, (10) Overland Property Group, (11) Pedcor, (12) Purple Martin, (13) The Brownstone Group, (14) Fort Worth Housing Solutions, (15) Harris284, (16) Generation Housing Partners, (17) True Casa, (18) Mission Development, (19) Pennrose, (20) Mayor Pro Tem Gyna Bivens, (21) Fort Worth Independent School District, (22) Congressman Marc Veasey, (23) Fort Worth Police Department, (24) Mayor Mattie Parker, (25) Structure Development, (26) Rural Rental Housing, (27) Resolution Companies, (28) Texas Housers, (29) National Church Residences, (30) Mark-Dana, (31) Pano, (32) Impact Residential, (33) Housing Authority of the City of El Paso, (34) Hettig-Kahn, (35) Stewardship Development, (36) DMA Companies, (37) Mears Development, (38) Alyssa Carpenter, (39) Zimmerman Properties, (40) Housing Authority City of Brownsville, (41) NAACP, (42) Bronte Bejarano, (43) AARP Texas, (44) Tejas Housing, (45) Arx Advantage, (46) BETCO, (47) National CORE, (48) Lucas & Associates, LP, (49) Sallie Burchett, (50) Greg Stoll, (51) Kittle, (52) MREC Companies, (53) Housing Authority of the City of Austin, (54) Carleton Companies, (55) Texas 2036, Texas Restaurant Association, Texas Association of Businesses, and Early matters (56) NRP Group, (57) City of Austin Housing Department, (58) Ryan Garcia, (59) Volunteers of America, (60) Senator José Menéndez, (61) Lincoln Avenue Communities, (62) Garland Habitat, (63) Fish Pond, (64) Foundation Communities, (65) March Capital, (66) Disability Rights TX, (67) Javelin, (68) Texas Homeless Network, (69) Marque, (70) Brinshore, (71) Sierra Club, (72) Palladium USA, (73) April Housing, (74) Sullivan PLLC, (75) Atlantic Pacific, (76) Katopody, (77) Mike Ash, (78) St Stephen UMC, (79) Hoke Development.

It should be noted that in the interest of brevity, some of the more extensive comments received have been summarized significantly. However, copies of all comments received have the commenter's number denoted, are all available on the Department Website.

COMMENT SUMMARY: Commenter 5 believes several aspects of the proposed rule negatively impact the ability of rural areas and rural communities to address affordable housing needs. Commenter 5 highlights incentivizing larger developments as an example. Commenter 5 states the fiscal interpretation of HB 1058, authorizing the State Housing Tax Credit, referenced in the preamble is inaccurate. Commenter 5 attached a legal opinion by Jonathan F. Mitchell as an appendix to their comment that concurs with their interpretation.

STAFF RESPONSE:

In response to Commenter 5, Staff acknowledges their comments on the rural communities and areas of Texas needing more affordable housing, however no responsive change will be made as the comment is not in regards to language in the proposed rule. Staff recommends that Commenter 5 bring these concerns to upcoming 2025 QAP Roundtable discussions.

§11.1(d)(125) Supportive Housing Definition

COMMENT SUMMARY: Commenter 6 suggests the requirement that supportive housing developments be located near regularly scheduled public transportation is difficult for rural communities to meet. Commenter 6 proposes removing this provision for applications in rural areas.

Commenter 28 suggests removing lookback periods from Supportive Housing developments citing rules that go beyond what is outlined in §10.802 regarding Tenant Selection Criteria. Commenter 28 suggests amending and removing certain sections, those of which are mentioned in their respective comment.

Commenters 41 and 68 are opposed to the inclusion of additional tenant selection criteria citing unnecessary and burdensome restrictions that are beyond what is required via statute and disproportionately impact Black tenants. Commenters 41 and 68 recommend revising the section to remove language related to prior eviction history, credit, and criminal history.

STAFF RESPONSE:

Staff acknowledges Commenter 6 on the requirement of supportive housing developments being located near regularly scheduled public transportation to be difficult in Rural regions of Texas. Staff requires more analysis and additional public input to determine if "on-demand transit" provides an equivalent service to the current requirement. Currently Staff does not plan to make changes for this section of the rule, Staff recommends discussing this topic in the 2025 QAP Roundtable Discussions.

Staff acknowledges Commenter 28 on their comment regarding Supportive Housing developments lookback periods along with their recommendations for amending and removing certain sections of the rule, however Staff currently does not have plans to make changes to this section of Supportive Housing for the 2024 QAP.

Staff is aware of the concerns from Commenters 41 and 68, and would like to reference that neither §10.802 of the Texas Administrative Code nor §11.1(d)(125) mandate particular scenarios under which tenants must be denied based on prior evictions or credit history. Staff believes more discussion is warranted before removing any of the above referenced criteria.

Currently Staff does not plan to make any changes to §11.1(d)(125) for the 2024 QAP.

§11.1(e) Data

COMMENT SUMMARY: Commenter 4, 8, 10, 12, 13, 15, 16, 17, 19, 27, 30, 31, 34, 35, 37, 39, 44, 50, 52, 58, 61, 62, 65, 69, 77, and 79 support the inclusion of Texas Education Agency in the section, outlining the use of the most current data as published on August 1st. Commenter 4, 8, 10, 12, 13, 15, 17, 19, 27, 30, 31, 34, 35, 37, 39, 44, 52, 58, 61, 62, 65, 69, 77, and 79 highlight the delay of 2023 Texas Education Agency data and the difficulty this creates for housing tax credit applications. Commenter 4, 8, 10, 12, 13, 15, 16, 17, 19, 27, 30, 31, 37, 39, 44, 50, 52, 58, 61, 62, 69, 77, and 79 suggest new language to this effect.

Commenter 46 supports the earlier date for the most current data available, but would suggest that we release the Site Demographics shortly after to assist applicants with site selection.

STAFF RESPONSE:

Staff acknowledges Commenter 46 on their suggestion regarding an earlier Site Demographics Characteristics Report release date. While Staff understands the desire for data to be available quickly, the 2024 QAP does not currently contemplate the release date of the Site Demographics Characteristics report and a responsive change cannot be made.

Regarding Commenters 4, 8, 10, 12, 13, 15, 16, 17, 19, 27, 30, 31, 34, 35, 37, 39, 44, 50, 52, 68, 61, 62, 65, 69, 77, and 79, staff understands the challenges caused by delayed TEA Accountability ratings; however, staff believes this issue can be addressed by altering other sections of the QAP and does not

believe adopting the proposed language on a permanent basis is necessary.

§11.3 Housing Deconcentrating Factors

COMMENTER SUMMARY: Commenters 29, 45, and 46 suggest a non-material change in order to clarify the intent of the Two Mile Same Year Rule. Commenters 29 and 45 cite consistency with the intent of the Texas Government Code and Texas Administrative Code in prioritizing At-Risk Developments. Commenter 45 has provided language to this effect.

Commenter 46 suggests a similar revision and cites similar factors to those discussed by Commenter 29 and 45. Commenter 46 has provided additional reasoning and alternative language to this effect.

Commenter 57 proposes local governments should be empowered to waive the Two Mile Same Year Rule suggests new language to this effect.

STAFF RESPONSE:

Staff acknowledges Commenters 29, 45, and 46 on the suggestion of non-material change to clarify the intent of the Two Mile Same Year Rule. Staff encourages a discussion of this rule and its interpretation in the 2025 QAP Roundtables and believes more input is needed; however, staff does not recommend changes based off these recommendations for the 2024 QAP.

In response to Commenter 57, Staff recommends no changes as the proposal to allow local governments to waive the Two Mile Same Year Rule would violate state statute.

§11.6(3)(C)(iv) HUD Choice Neighborhood

COMMENT SUMMARY: Commenter 9, 12, 14, 20, 21, 22, 23, and 24 are in support of this item, citing the importance of the Choice Neighborhoods Initiative (CNI).

Commenter 40 suggests a revision to the population threshold citing a disadvantage for smaller communities. Commenter 40 recommends reducing the population threshold to 880,000 in order to allow smaller communities to be eligible for this award. Commenter 40 suggests a Set-Aside for CNI communities.

Commenter 72 suggests weighting this award proportionally to other criteria in the QAP citing inclusion of these criteria rather than bypassing them in exchange for an automatic award.

STAFF RESPONSE:

Staff appreciates the support from Commenters 9, 12, 14, 20, 21, 22, 23, and 24.

Staff acknowledges Commenter 40 on their suggestion for an alternative population threshold and potential set-aside, but staff does not have current plans to make changes to this scoring item. Staff recommends raising this topic during the 2025 QAP Roundtable Discussions to solicit more feedback from staff and stakeholders.

Staff acknowledges Commenter 72 on their suggestion of including a more meticulous criteria for HUD Choice Neighborhoods, however staff does not have current plans to add additional rules for receiving this award.

§11.6(3)(C)(v) Award to Highest Scoring Development with Pre-K

COMMENT SUMMARY: Commenters 1, 2, 3, 52, and 69 are in support of this item, emphasizing the importance of early childhood education. Commenters 1, 2, 3, 52, and 69 request that an automatic award also be available to counties with populations exceeding 300,000. Commenter 52 cites concerns related to the target population of some developments and the disadvantage this would cause.

Commenters 16, 17, and 39 recommend that this section be limited to only the largest subregions, those with subpopulations that exceed 2,500,000, citing concerns regarding the expertise and expectation of developers operating Pre-K facilities. Commenter 17 also cited concerns regarding inequities and disparate impacts among less populated subregions. Commenters 16, 17, and 39 suggest new language to this effect. Commenter 27 suggests similar concerns to that of commenters 16 and 17.

Commenter 64 suggests revision of the language to subpopulations that exceed 1,500,000 in order to exclude specific subregions from the scoring item citing a disadvantage in more competitive regions.

Commenters 42, 46, 63, and 72 recommend the removal of sub paragraph that grants tax credits to the highest scoring developing providing Pre-K citing concerns around financial feasibility and inequitable treatment for certain target populations. Commenter 46 cites additional concerns including increased liability insurance, increased risk to investor regarding hazardous events, and owner risk and management difficulties outside of the applicant's expertise. Commenter 58 also recommends removal of the subparagraph, stating the program is outside the expertise of housing developers. Commenter 72 suggests that this requirement is unnecessary for all developments and would create an unwarranted burden.

Commenter 53 and 54 support the inclusion of this language.

Commenter 76 suggests this item as written is problematic for the program citing the risk of mismatch to resident needs overtime, unsustainability, and inequity in long term impacts; each of which is explained in greater detail. Commenter 76 suggests restricting automatic awards to location-specific economic development policy initiatives endorsed by local governments, such as CRPs. Commenter 76 states that each additional automatic award opportunity diminishes the effectiveness of the point-base system.

STAFF RESPONSE:

Staff appreciates the comments of support from Commenters 1, 2, 3, 52, 53, 54, and 69 regarding the importance of early childhood education.

Staff acknowledges the recommendation from Commenters 1, 2, 3, 52, and 69 to decrease the population threshold for the automatic award to regions with a county of 300,000. However staff does not have plans to change the population threshold for the 2024 QAP, as the impact of the item still need to be reviewed in the upcoming round. Staff is aware of concerns related to certain target populations being disadvantaged, and will monitor the 2024 9% Applications for these concerns brought up by Commenter 52.

Staff acknowledges Commenters 16, 17, and 39 recommendation to only allow the largest subregions that contain subpopulations of 2,500,000 to be qualified for the on-site Pre-K automatic award. Staff is also aware of the concerns regarding expectations and standards for developers to fully operate Pre-K facilities. Currently Staff have no plans of making changes to the population threshold amounts for the 2024 QAP. In regards to concerns of Commenters 16, 17, 27, and 39 regarding the impact among less populated subregions, Staff will monitor the

potential impact with the current threshold, and address any concerns in the upcoming QAP 2025 Roundtables.

Staff appreciates the recommendation from Commenter 64 for increasing the population threshold to 1,500,000 in order to exclude certain subregions, however Staff does not have any current plans to increase this threshold for the 2024 QAP.

Staff acknowledges Commenters 42, 46, 58, 63, and 72 recommendation to remove the subparagraph on high scoring developments that provide Pre-K based upon financial infeasibility and lack of expertise for developers, however staff has no current plans to remove this subparagraph for the 2024 QAP. Staff understands the concerns of increased liability insurance, risk to investor regarding hazardous events, and owner management difficulties from Commenter 46. Staff recommends to bring up these concerns for the 2025 QAP Roundtable Discussions.

Staff appreciates the concerns from Commenter 76 around resident needs, long term impacts, and the suggestion to restrict automatic awards to location specific economic development policy development initiatives, and Staff will keep these concerns in mind for the 2025 QAP Planning Process.

§11.7 Tie Breaker Factors

COMMENT SUMMARY: Commenter 25 proposes a change for the threshold criteria for the final tie breaker to trigger at 10 feet or fewer as opposed to 100 feet or fewer. Commenter 25 cites the level of inaccuracy that common measuring tools include, among other specifications. Commenters 32, 34, 35, 47, 49, and 51 agree with Commenter 25 that 100 feet or fewer is too high.

Commenters 28, 41, 43, 66, and 68 suggest using a tie breaker that prioritizes the production of units at or below 30% AMI. Commenters 28, 41, 66, and 68 have provided language and discussion to this effect.

Commenter 31 states that changing the way the tiebreaker measurements are done make it more difficult for applicants and won't result in more amenities for residents. Commenter 31 suggests keeping the 2023 language.

Commenters 38, 46, 47, 49, and 51 suggest revised language regarding the process for providing GPS coordinates citing consistency in measurements across all applications. Commenter 38 suggests language to this effect. Commenter 46 cites similar concerns and has provided alternative language to that affect.

Commenter 38 suggests revision of section related to parks citing use restrictions at some parks such as school playgrounds. Commenter 38 suggested language to this effect.

Commenters 41 and 66 suggest the tie breaker should be adjusted to incentivize distance to healthcare facilities. Commenters 41 and 66 suggest language to this effect.

Commenter 67 suggests revising a proposed deletion related to 20% poverty rate threshold citing it is a necessary filter ensuring that developments are not built in high poverty areas.

Commenter 70 suggests removing language related to the 100 feet margin of error citing a burden of proof on the applicant.

Commenter 78 does not agree with the distance to amenities tie breaker metric citing the location of their congregation which performs well under the draft language, but is not a suitable location for affordable housing due in part to distance from the nearest grocery store.

STAFF RESPONSE:

In response to Commenter 25, staff acknowledges the recommendation to decrease the acceptable level of inaccuracy to 10 feet instead of 100 feet. Staff also acknowledges Commenters 32, 34, 35, 47, 49, 51, and 70 concerns of 100 feet being too high of an acceptable tiebreaker range. No change is recommended as Staff believes that for the initial year of a new tie-breaker it is appropriate to have a high standard for potential inaccuracy and measurement error. Staff will reevaluate this in the 2025 QAP development process.

Staff appreciates Commenters 28, 41, 43, 66, and 68 recommendations for a new tiebreaker prioritizing units at or below 30% AMI, however staff believes introducing a new tiebreaker at this time would not be feasible. Staff recommends speaking on this tiebreaker during a 2025 QAP Roundtable Discussion.

We appreciate the recommendation from Commenter 31 on keeping the existing 2023 Tiebreakers, however staff believes the new tiebreaker on emphasizing amenities for potential residents is a positive change that achieves policy goals.

Staff appreciates Commenters 38, 46, 47, 49, and 51 on their suggestion of revising the language on how to provide the GPS coordinates and concerns of consistency across all applications. Staff plans to keep the current drafted language for the 2024 QAP, however Staff recommends Commenters 38, 46, 47, 49, and 51 discuss these concerns in the upcoming 2025 QAP Roundtables.

Staff acknowledges the concerns of Commenter 38 regarding usage restrictions. Staff plans to keep the current draft language but will monitor this issue in the upcoming round and is open to revisions for 2025.

Staff appreciates Commenters 41 and 66 recommendations for including healthcare facilities in the amenities tiebreaker. Staff currently has no plans to add or remove any amenities for this tiebreaker.

In response to Commenter 67, Staff does not have current plans to keep the 20% poverty rate threshold language for tiebreakers in the 2024 QAP but will monitor the average development site's poverty rate in the coming round. Staff acknowledges the concerns of Commenter 78 regarding the amenities available at their site location. Staff believes that there are other scoring items in the QAP that determine what a quality site is beyond the proposed and current tiebreakers.

§11.8(b)(1) Pre-Application Requirements

COMMENT SUMMARY: Commenter 17 suggests that language regarding Pre-Application Pre-K requirements in §11.9(e)(3)(J) should be also included in §11.8(b) Pre-Application Threshold Criteria. Commenter 17 cites the need for Pre-Application requirement consistency throughout the QAP.

Commenter 17 states that Pre-Application Threshold Criteria regarding Property Tax Exemption Disclosures will unfairly impact developments that involve a nonprofit partner. Commenter 17 cites the various levels of tax exemption that nonprofits receive, cites notification and opposition factors, and discusses other unintended consequences if these disclosures are made at Pre-Application. Commenter 17 has provided language for a potential revision.

Commenter 46 suggests removing the item for disclosing Property Tax Exemptions at Pre-Application citing financing variability that typically occur at this time in the process.

Commenter 69 proposes a number of additions to the Pre-Application requirements to specify that common amenities must be of benefit to all residents in a proposed development. Existing language excludes this requirements. Commenter 69 includes suggested language to this effect. Commenter 69 also suggests including Elderly Developments in the section related to Common Amenities, with language being provided by the commenter.

STAFF RESPONSE:

Staff concurs with Commenter 17, a responsive revision has been made to §11.8(b) Pre-Application Threshold Criteria.

Staff acknowledges the proposed revisions on Property Tax Exemption Disclosures from Commenter 17, however Staff will not be making changes to this item at this time.

Staff acknowledges Commenter 46 on removing the item for disclosing Property Tax Exemptions at Pre-Application, however Staff believes this change increases transparency and does not have plans to remove this item from the QAP.

Staff appreciates Commenter 69 for providing recommendations in the Pre-Application requirements relating to common amenities. Staff has not contemplated such a change in the 2024 QAP development process and is not prepared to draft language to this effect. Staff suggests discussing this topic during the 2025 QAP Roundtable.

§11.9(b)(3) Quantity of Low-Income Units

COMMENT SUMMARY: Commenters 4, 6, 7, 8, 10, 11, 13, 15, 16, 17, 19, 26, 27, 30, 31, 32, 34, 35, 36, 37, 38, 39, 42, 44, 46, 47, 49, 50, 51, 52, 58, 61, 62, 63, 65, 67, 69, 70, 72, 74, 75, 77, and 79 suggest postponement of the Quantity of Low-Income Units Scoring Item, citing concerns around decreasing quality and size of units, along with other potential unintended consequences. Commenters 12, 17, 27, 31, 32, 34, 35, 36, 37, 39, 42, 45, 49, 50, 51, 70, 72, 74, 75, 77, and 79 cite additional concerns related to the general economic environment and financial feasibility of incentivizing additional unit development. Commenters 4, 6, 7, 8, 10, 11, 13, 15, 16, 17, 19, 25, 30, 32, 34, 35, 36, 37, 38, 39, 44, 45, 46, 47, 49, 50, 51, 52, 58, 61, 62, 63, 65, 69, 72, 74, 75, 77, and 79 suggest removing this scoring item and revisiting it in the 2025 QAP Roundtables. Commenter 12 and 56 suggest removing this item from the QAP entirely. Commenter 5 suggests this item will be particularly harmful to rural communities and not feasible for future developments in rural areas. Commenter 5 suggests these areas cannot support larger developments and that this scoring item will have adverse effects. Commenter 56 suggests to incentivize more units, the department should accelerate several post-award administrative processes. Commenter 63 suggested language generalizing the scoring item and removing urban and rural designations.

Commenter 28 recommends revising the scoring item to include points for providing greater Extremely Low Income Units than the previous average, citing the increasing need for these type of Units. Commenter 28 has provided suggested language to this effect.

Commenter 38 provides data that alludes to lower production of Low-Income Units after the 2023 QAP language around Quantity of Low-Income Units was added. For this reason, Commenter 38 suggests using the average 2022 and 2023 awards as a baseline is misguided. Commenter 38 suggests keeping the portion of the scoring item related to Rehabilitation Developments, but limiting it to (1) point, citing a more achievable bar to clear as opposed to New Construction Developments.

Commenter 42 suggests lowering the baseline percentages to allow TDHCA and the Board to study the impacts of this change. Commenter 42 argues the averages do not sufficiently consider the various distinct requirements for different target populations.

Commenters 64, 66, and 68 support the proposed language with some revisions. Commenter 64 and believes that incentivizing rehabilitation developments to achieve 50% more Units that the previous average of the two prior competitive rounds may create negative consequences by displacing tenants. Commenter 64 suggests removal of this (3) point scoring item for rehabilitation developments. Commenters 64 and 66 also suggest allowing rehabilitation developments with previous non-TDHCA funding to be eligible if the option remains. Commenter 68 suggests that the Department can replace this option with new language that encourages both Rehabilitation and new 30% units.

Commenter 66 supports the inclusion of this item but suggests revision to include stronger requirements to create a more impactful item that will increase unit production. Commenter 66 has provided language to this effect.

Commenter 75 cites additional concerns for Elderly, 9% HTC, and Rehabilitation transactions as related to the unintended consequences mentioned in other comments.

STAFF RESPONSE:

In regards to comments suggesting the Quality of Low Income Units scoring item be postponed for the 2024 QAP and comments suggesting the scoring item be removed entirely staff acknowledges disagreement with new scoring item. However, staff believes the item is necessary to achieve departmental goals in 2024 and recommends no change. Staff currently does not plan to postpone or remove this scoring item for the 2024 QAP.

Staff acknowledges Commenters 12, 17, 27, 31, 32, 34, 35, 36, 37, 39, 42, 45, 49, 50, 51, 70, 72, 74, 75, 77, and 79 on the concerns related to the general economic environment and financial feasibility. Staff recommends Commenters 12, 17, 27, 31, 32, 34, 35, 36, 37, 39, 42, 45, 49, 50, 51, 70, 72, 74, 75, 77, and 79 discuss these concerns with other stakeholders and Staff at upcoming QAP Roundtable Discussions.

Staff appreciates Commenter 28 suggestion of include points for Extremely Low Income Units than the previous average, however Staff currently does not plan to include any revisions for this scoring item and believes this change is too substantial to implement at this stage in the QAP development process.

Staff acknowledges Commenter 38 on the data provided regarding the production of Low-Income Units resulting in lower production after the 2023 QAP language was added and will review this material. Staff appreciates the recommendation to keep a portion of the scoring item related to Rehabilitation Developments. Staff currently does not have plans to make any changes to this section.

Staff appreciates the suggestion from Commenter 42 on lowering the baseline percentages that will allow TDHCA and the Board to study potential impacts from this change. Staff believes the percentages as drafted are appropriate. Staff will monitor the impacts from this change for the 2024 9% Round, and recommends that Commenter 42 bring this topic up for discussion for 2025 QAP Roundtable Discussions.

Staff appreciates the support from Commenters 64, 66, and 68 and acknowledges the suggested revisions to the item. Currently Staff does not have plans to make any changes to

this section, and recommends Commenters 64, 66, and 68 provide these revisions as items of discussion for upcoming QAP Roundtables.

Staff acknowledges the concerns for Elderly, 9% and Rehabilitation transactions from Commenter 75 regarding this scoring item. Staff will monitor the 2024 9% Applications to see if any potential concerns come up from the added language.

§11.9(c)(4) Residents with Special Housing Needs

COMMENT SUMMARY: Commenter 46 suggests reinstating 2023 QAP language that more generally applies to projects that look to partner with the United States Department of Veterans Affairs. Commenter 46 cites information related to VA clinics and has provided updated language to this effect. Commenter 61 suggests language regarding supportive housing for veterans be reverted back to 2023 language citing feasibility and timeline concerns. Commenter 64 requests a revision to the language to remove the requirement that land be owned by Veterans Affairs citing a lack of opportunity for these projects to be developed.

STAFF RESPONSE:

Staff acknowledges the difficulty of meeting the requirements as drafted, but believes this is appropriate as it is a newly available item. Staff recommends no change, but will monitor the impact of the language in the subsequent round and may discuss potential revisions in the 2025 QAP roundtables.

§11.9(c)(5) Opportunity Index

COMMENT SUMMARY: Commenter 5 and 58 suggest that language changes intended to expand scoring opportunities for rural areas has erroneously made other existing options, such as qualifying through adjacent census tracts, unavailable to them.

Commenter 28 states that the point item for Veteran Hospitals should be moved citing the potential for applicants to double dip with Healthcare facilities. Commenter 28 supports moving this language to a different section, Resident Supportive Services.

STAFF RESPONSE:

In response to Commenter 5 and 58, a responsive revision has been made to include rural developments.

Staff appreciates the concern from Commenter 28 on placing the point item for Veterans Hospitals in Opportunity Index. Staff will monitor this item and its impact on the scoring item for the 2024 9% Cycle.

§11.9(c)(6) Underserved Area

COMMENT SUMMARY: Commenters 6, 7, 45, 65, and 73 recommend including the USDA Set-Aside in the exclusion from points under §11.9(c)(6)(F) citing potential confusion given these applications compete in both USDA and At-Risk Set-Asides

Commenter 28 supports the inclusion of language allowing underserved points to be awarded to applicants in tracts with existing properties that serve different target populations, but is worried that this may produce a possible outcome where developments are concentrated in low-income areas. Commenter 28 recommends reinstating the scoring option to receive 6 points for developments in tracts without developments in the past three-years, with high median income and high quality school access.

Commenter 46 requests the scoring items be listed in descending order citing ease of reference.

Commenter 64 supports the addition allowing developments with different target populations to gain maximum underserved area points. Commenter 64 suggests revision of a similar section to reference the same target population's information as this section.

STAFF RESPONSE:

In response to Commenters 6, 7, 45, 65, and 73, a responsive revision has been made to include USDA Set-Aside in the exclusion from points under §11.9(c)(6)(F).

Staff appreciates the support from Commenter 28 for allowing underserved points to be awarded in tracts with existing properties serving different target populations. Staff also appreciates the recommendation of reinstating the three mile same year rule, however Staff will monitor this scoring item during the 2024 9% Round for any potential revisions.

In response to Commenter 46, Staff believes the current structure of the rule is sufficient for reference.

Staff appreciates the support from Commenter 64 on allowing developments with different target populations to underserved area points. Staff also appreciates the recommendation of proposed language that will distinguish by target population in other underserved area scoring options, however Staff does not have plans to include this language to the 2024 QAP.

§11.9(c)(7) Access to Jobs

COMMENT SUMMARY: Commenter 66 recommends amending language regarding the Access to Jobs point item to ensure a qualifying public transportation stop is along an accessible route. Commenter 66 suggests awarding points for transportation not accessible to people with disabilities is a violation of the ADA.

STAFF RESPONSE:

Staff appreciates Commenter 66's recommendations for the Access to Jobs item to share a similar description for accessible routes as the Opportunity Index scoring item. Staff currently does not have any plans to make this change for the 2024 QAP, Staff will revisit Commenter 66's item for the 2025 QAP Planning Process.

§11.9(d)(7) Concerted Revitalization Plan (CRP)

COMMENT SUMMARY: Commenters 12, 16, 26, and 39 recommend that this scoring item revert back to the 2023 QAP language citing concerns regarding the lack of a scoring preference for developments within QCT's and additional barriers for developments in CRP areas.

Commenter 46 suggests the removal of language requiring a letter from a local official if the development is QCT citing no scoring difference between developments within and not within QCT areas. Commenter 46 suggests adding Neighborhood Empowerment Zones as acceptable plans for this item. Commenter 46 also recommends a new scoring item for proposed New Construction in rural areas. Commenter 46 has provided language to this effect.

Commenter 61 requests a revision to the language related to Concerted Revitalization Plans citing excess notice requirements that could result in slower development processes and community resistance.

Commenter 63 suggests revision of the language citing redundant language that could cause confusion to applicants. Commenter 63 provided language to this effect.

Commenter 72 suggests that CRP projects should stand on equal footing with high opportunity developments given poverty rate is no longer a tie breaker threshold citing a preference that is no longer warranted.

STAFF RESPONSE:

Staff acknowledges Commenters 12, 16, 26, and 39 concerns regarding scoring preferences for developments within QCTs and the barriers for these developments. Currently staff does not plan to revert back to the 2023 QAP language for this section under the Concerted Revitalization Plan Rules.

Staff appreciates Commenter 46's suggestion of removing language in regards to the requirement of the letter from a local official if the development is located within a QCT. Staff acknowledges the recommendations of adding Neighborhood Empowerment Zones (NEZs) as acceptable documentation for this item. Staff also acknowledges the proposed language for a new scoring item related to New Construction Rural Applications. Staff currently has no plans to add or remove language under Concerted Revitalization Plan. Staff recommends to mention the proposed recommendations to the 2025 QAP Roundtable discussions.

Staff acknowledges Commenter 61's request to revise the requirements to provide a letter from a local official. Staff does not plan to include any revisions to this section under CRPs.

Staff acknowledges Commenter 63's concern regarding redundant language, however Staff will plan to use the current proposed language in the 2024 QAP Draft.

Staff appreciates the suggestion from Commenter 72 that CRP projects should stand on equal footing with high opportunity developments, however, Staff does not plan to make additional large revisions on this section for the 2024 QAP. Staff recommends that Commenter 72 bring this topic up for discussion for the 2025 QAP Roundtables.

§11.9(e)(2) Cost of Development per Square Foot

COMMENT SUMMARY: Commenter 63 suggests a revision to language regarding Common Area square footage included in Net Rentable Area. Commenter 63 cites consistency in the treatment of different building types and costs of construction. Commenter 63 has provided language to this effect.

STAFF RESPONSE:

Staff does not see utility in the suggested change due to concurrent increases in Cost of Development per Square Foot increases already proposed in the 2024 QAP. Staff currently has no plans to add or remove additional language to this section.

§11.9(e)(3) Pre-Application Participation

COMMENT SUMMARY: Commenter 17 recommends a correction to the language so as to include all of the Pre-Application requirements. Commenter 17 suggested language to this effect.

STAFF RESPONSE:

In response to Commenter 17, a responsive revision has been made to include all of the Pre-Application requirements.

§11.9(e)(4) Leveraging of Private, State, and Federal Resources

COMMENT SUMMARY: Commenter 45 and 74 states that the new Cost per Square Foot adjustment poses a negative threat to project leveraging, citing an average 3-6% reduction in eligible basis to claim maximum points.

Commenter 74 recommends increasing the award leveraging factor to 10% from 9% for the top scoring item in this category.

STAFF RESPONSE:

Staff understands the concerns from Commenter 45 and 74 in regards to the 3-6% reduction in eligible basis, however the current proposed changes in the 2024 QAP Draft to Cost per Square Foot are statutory and cannot be changed.

Staff acknowledges Commenter 74's suggestion to increase award leveraging for the top scoring item, however Staff does not believe this change can be made at this time and would suggest introducing it during the 2025 QAP Roundtables.

§11.9(e)(5) Extended Affordability

COMMENT SUMMARY: Commenter 43 suggests including a point option for developments that include a planned phase out of the expiration or openness to negotiate extension of affordability requirements.

STAFF RESPONSE: Staff appreciates Commenter 43's suggestion to provide a point for developments that include a phased plan for affordability expiration, but Staff believes this topic needs more discussion and research among stakeholders before potential implementation. Staff recommends bringing this up during the 2025 QAP Roundtables.

§11.9(e)(6) Historic Preservation

COMMENT SUMMARY: Commenter 46 requests clarification between items (i) and (ii), suggesting the removal of item (ii) if the requirements are identical and the percentage remains the same regardless of number of units.

STAFF RESPONSE: Staff acknowledges Commenter 46's request for clarification regarding unit requirements for Historic Preservation Developments. Staff believes these are two distinct items, and will remain as is in the 2024 QAP.

§11.9(e)(9) Readiness to Proceed

COMMENT SUMMARY: Commenters 12, 16, 27, and 39 recommend the removal of the Readiness to Proceed scoring item citing concerns around negative economic factors and the increasing number of statutory deadlines.

Commenter 30 suggests the removal of language denying applications the ability to initiate a credit return as a result of Force Majeure events citing investor hesitancy and responsible use of tax credit allocations.

Commenter 46 supports the proposed changes to the section citing an appropriate level of due diligence.

Commenter 56 appreciates the updates to this item but suggests that site acquisition prior to closing is not a necessary indication of a project's readiness and will incur additional costs.

Commenter 64 requests clarification on this item citing different requirements and expectations in different jurisdictions and other timeline concerns.

STAFF RESPONSE:

Staff acknowledges Commenters 12, 16, 27, and 39 proposal of removing Readiness to Proceed due to negative economic factors and statutory deadlines. Currently Staff does not plan to remove this scoring item for the upcoming 2024 9% Round.

In regards to Commenter 30, the current 2024 QAP Draft addresses the concern of retaining eligability for Force Majeure treatment.

Staff appreciates the support from Commenter 46 and 56 to the proposed changes in Readiness to Proceed. Staff acknowledges the insight from Commenter 56 regarding site acquisition as a readiness indicator and is open to discussions of an alternative metric for the 2025 QAP.

In regards to Commenter 64, responsive changes have been made to specify the timeline and required permit.

§11.101(a)(1) Floodplain

COMMENT SUMMARY: Commenters 28 and 66 suggest including more stringent incentives for development in safer locations that are outside high-risk disaster areas. Commenter 66 suggests implementing strategies to further mitigate against development in high-risk disaster areas such as fires, winter storms, and tornados.

STAFF RESPONSE: Staff appreciates Commenters 28 and 66 for their comments regarding improved floodplain and disaster mitigation, however, this change would be too substantial to make at this point in the 2024 QAP development process. Staff recommends discussing this topic during the 2025 QAP Roundtables.

§11.101(a)(2) Undesirable Site Features

COMMENT SUMMARY: Commenters 12, 16, 27, and 39 recommend prioritizing rehabilitation of non-affordable housing developments to support the agency's goals of increasing the number of units. Commenters 12, 16, 27, and 39 suggest exempting rehabilitation developments from Undesirable Site Features to do this. Commenters 12, 16, 27, and 39 suggest new language to this effect.

Commenter 39 supports staff's revision of this rule.

Commenter 41 recommends revisions to a number of subsections citing the need for greater protection from Undesirable Site Features and other hazards not currently contemplated by the QAP. Commenter 41 suggests an additional Undesirable Site Feature be added addressing Rehabilitation Developments that have prior issues with infestations and hazardous materials. Commenter 41 suggests language to this effect.

Commenter 46 recommends deferring to minimum separation distances in §11.101(a)(2)(D) when looking at the minimum separation from a proposed housing developments citing different interpretations of that rule by different agencies. Commenter 46 has provided revised language to this effect.

Commenter 46 recommends Undesirable Site Features related to oil refining be mitigatable citing the need for affordable housing in communities with oil refineries. Commenter 46 requests clarification and further explanation of the rule.

Commenter 66 suggests revision to the floodplain standards to that which is used by General Land Office recovery programs requiring construction at one to two feet above the previous floodplain level.

STAFF RESPONSE:

Staff appreciates Commenters 12, 16, 27, and 39 recommendations on prioritizing rehabilitation of non-affordable housing developments. Staff acknowledges Commenters 12, 16, 27, and 39 suggestion of exemption rehabilitation applications from Undesirable Site Features. However, Staff does not have current plans to include an exemption for rehabilitation applications that in proximity to undesirable site features.

Staff appreciates the support from Commenter 39 on the revisions to Undesirable Site Features.

Staff acknowledges Commenter 41's recommendations for Undesirable Site Features related to Rehabilitation developments. Staff does not have any current plans to make revisions to this section, however Staff recommends to bring up these comments during the 2025 QAP Roundtables.

Staff acknowledges the recommendation from Commenter 46 on oil refineries to be mitigatable based upon the need for affordable housing in proximity to refineries. Staff recommends to bring up this topic during the 2025 QAP Roundtables

Staff appreciates the recommendation from Commenter 66 on floodplain standards to use the standards of the General Land Office recovery program. Staff believes this change is too substantial to implement at this state of the 2024 QAP development process, but encourages discussion in upcoming QAP planning cycles.

§11.101(a)(3) Neighborhood Risk Factors

COMMENT SUMMARY: Commenter 4, 8, 10, 11, 12, 13, 16, 17, 19, 29, 31, 32, 34, 35, 37, 44, 50, 52, 58, 61, 62, 69, 77, and 79 suggest using Texas Education Agency data available as of August 1, 2023 for the purpose of determining school scores. Commenter 4, 8, 10, 36, 38, 39, 45, and 70 cite litigation against the Texas Education Agency and the uncertainty this creates for Applicants regarding Neighborhood Risk Factors. Commenters 4, 12, 16, 17, 19, 29, 31, and 36 suggested new language to this effect.

Commenters 6, 7, 10, 26, 31, 32, 34, 35, 36, 38, 45, 65, 74, and 79 agree with Commenter 4 and suggest that the item should stay as it is stated in the 2023 QAP.

Commenter 11 recommends that consideration of school ratings should be removed entirely from the eligibility criteria.

Commenters 12, 16, 27, 39, and 73 recommend reinstatement of 2022 language providing an exemption for developments encumbered by a TDHCA LURA citing barriers to preserving existing TDHCA-funded affordable housing. Commenter 73 has provided language to this effect.

Commenters 12, 16, 27, 39, 47, and 49 do not support the requirement to provide onsite after school learning centers as part of mitigation for this Neighborhood Risk Factor. Commenter 12, 16, 27, and 39 suggest new language to this effect that aligns with language from the 2022 QAP.

Commenter 38 believes this language should be suspended for the 2024 QAP citing timeline difficulties for the upcoming year.

Commenter 60 suggests temporarily suspending all school rating criteria, citing uncertainty surrounding new criteria and the impacts of the COVID-19 pandemic.

Commenter 79 suggests including the At-risk Set-Aside in the exemption referenced under §11.101(a)(3)(D)(iii)(IV), citing similar constraints on space as USDA Set-Aside developments.

STAFF RESPONSE:

Regarding concerns surrounding the delayed release of TEA Accountability ratings, staff acknowledges the uncertainty this creates for applicants. A responsive change has been made. Only

2022 ratings shall be evaluated when determining Neighborhood Risk Factors.

Staff acknowledges the concerns of Commenter 11 but believes that school ratings are an important item to consider when determining site eligibility. Staff recommends no change.

Staff recognizes the suggestion of Commenters 12, 16, 27, 39, 47, 49, and 73 to remove or alter the requirement to provide onsite after school learning centers as part of mitigation for this Neighborhood Risk Factor. While staff understands the challenges associated with providing mitigation as drafted, Staff believes this item is an important resource for tenants. Staff recommends no change

Regarding Commenters 38 and 60, staff believes responsive revisions to this item negates the need for a suspension.

Regarding the suggestion of Commenter 79 to include At-risk developments in the exemption referenced §11.101(a)(3)(D)(iii)(IV), Staff acknowledges the space and location constraints but is not considering expanding the exemption at this time.

§11.101(b) Development Requirements and Restrictions

COMMENT SUMMARY: Commenter 43 recommends implementing universal design into construction and renovation proposals citing concerns around aging adults and mobility within tax credit developments.

STAFF RESPONSE: Staff acknowledges Commenter 43's commenter regarding the implementation of universal design, however, staff believes this is too substantial of change to be included in the 2024 QAP and would suggest bringing this up at the 2025 QAP Roundtables.

§11.101(b)(1) Ineligible Developments

COMMENT SUMMARY: Commenters 4, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 19, 27, 30, 32, 36, 37, 39, 44, 45, 46, 47, 50, 51, 52, 58, 61, 62, 65, 69, 77, and 79 suggest moving the cap on efficiency and one-bedroom units to 50%. Commenter 8, 12, 16, and 47 believe a 50% limitation will help the Department meets its goals around providing housing to families while also bringing more affordable units to market. Commenters 4, 6, 7, 10, 11, 13, 15, 16, 17, 18, 19, 26, 27, 30, 32, 36, 37, 39, 42, 44, 45, 46, 50, 51, 52, 58, 61, 62, 65, 69, 74, 77, and 79 believe a cap at 30% is too low and may make developments more costly to build. Commenters 7, 26, 45, 65, and 74 recommend a cap of 50% for inner-city developments and a cap of 30% for developments not in the inner-city. Commenters 17 and 39 suggest this clause be deleted entirely. Commenter 18 believes the language should be rescinded citing concerns regarding increase vacancy and contradictions with required Market Study information. Commenter 42 suggests changing the ineligibility requirement to either increase cap to 40%, allow a waiver with resolution, or make high density urban areas exempt.

Commenter 4 suggests removing all references to ineligible developments within certain school attendance zones citing a delay in the release of relevent data and the use of outdated ratings. Commenter 6, 7, 10, 11, 12, 13, 15, 16, 17, 26, 27, 30, 31, 34, 35, 36, 37, 38, 39, 44, 45, 46, 47, 48, 49, 51, 56, 58, 61, 62, 65, 69, 70, 73, 74, 77, and 79 suggest suspending the item citing similar factors. Commenter 48 suggests allowing applicants to submit appropriate mitigation at Pre-Applications if any issues with schools arise.

Commenter 57 proposes language granting an exemption for land owned by a jurisdiction or political subdivision that intends to convey the land through a competitive solicitation process.

Commenter 60 suggests temporarily suspending all school rating criteria, citing uncertainty surrounding new criteria and the impacts of the COVID-19 pandemic.

STAFF RESPONSE: Staff acknowledges Commenters 4, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 19, 27, 30, 32, 36, 37, 39, 44, 45, 46, 47, 50, 51, 52, 58, 61, 62, 65, 69, 77, and 79's suggestion to adjust the cap on efficiency and one-bedroom units to 50% with the belief that 30% is too low. Staff also acknowledges Commenters 7, 26, 45, 65, and 74 suggestion to place the cap at 50% for inner-city developments and 30% for developments outside the inner-city. Staff does not have any plans to adjust the cap at this time but will continue analyzing the impacts of the rule as written.

Staff acknowledges Commenter 17, 18, and 39's suggestion to remove the language from the 2024 QAP, but Staff believes this rule is important for ensuring high-quality units are created for families.

Regarding all Commenters concerned by the delayed release of TEA Accountability ratings, a responsive revision has been made suspending Ineligibility of Developments within Certain School Attendance Zones in the 2024 QAP.

Staff acknowledges Commenter 57's recommendation to grant an exemption for land owned by a jurisdiction that intends to convey the land, but Staff does has not adequately contemplated this situation and is unable to make a responsive change.

Staff acknowledges the concerns of Commenter 60 regarding school ratings criteria and the impacts of the COVID-19 pandemic. Staff has temporarily suspended this item.

§11.101(b)(4)(N) Mandatory Development Amenities

COMMENT SUMMARY: Commenter 13 suggests introducing a carve-out for energy-star rated windows in Historic Developments citing recent Board rulings and general difficulty in rehabilitating these buildings. Commenter 17 suggests this will also save time for TDHCA and the Board. Both Commenter 13 and 17 have suggested similar language to this effect.

STAFF RESPONSE: Staff believes the issue referenced in Comments 13 and 17 has been adequately addressed in the past through the waivers process and additional language is not necessary. No change is recommended.

§11.101(b)(5)(C) Educational Provider

COMMENT SUMMARY: Commenter 17 noted an inconsistency in the definition and use of the term "Educational Provider".

STAFF RESPONSE: A responsive revision has been made and the corrected language of "educational provider" will be used.

§11.101(b)(6)(B)(VI) Green Building Features

COMMENT SUMMARY: Commenter 71 suggests adopting and incentivizing more stringent energy efficiency and green building standards such as the 2015 IECC and 2018 IGCC citing improvements in delivering developments with improved sustainability and energy efficiency.

STAFF RESPONSE: Staff appreciates Commenter 71's suggestion to implement higher standards for green building and energy efficiency features, however, staff does not believe such a significant change can be done at this time for the 2024 QAP and

would suggest discussing this topic in the 2025 QAP Roundtables.

§11.101(b)(7) Resident Supportive Services

COMMENT SUMMARY: Commenters 28, 41, 43, and 68 recommend including eviction protection measures as incentives in the QAP citing data that was produced by UT Austin and provisions in use in other state QAP's. Commenters 28, 41, and 68 have provided language and a scoring matrix to this effect.

Commenter 55 is in support of existing language allowing application to meet its Resident Supportive Services requirement by including a High-Quality Pre-Kindergarten program, On-site services provided to K-12children, and/or a shuttle to and from nearby schools.

STAFF RESPONSE:

Staff acknowledges Commenters 28, 41, and 68 recommendations to include eviction protection measures in the QAP, however Staff believes that these proposed changes are too late to include in the 2024 QAP Draft. Staff nonetheless finds this item intriguing and will explore it further in the future. Staff recommends including this items in discussion for the 2025 QAP Roundtable discussions.

Staff appreciates the support from Commenter 55 for High-Quality Prekindergarten programs.

§11.101(b)(8) Development Accessibility Requirements

COMMENT SUMMARY: Commenter 63 is concerned that treating all Rehabilitations as "substantial alterations" triggers unnecessary rigorous accessibility standards. Commenter 63 has provided a revision of the language to correct this effect.

STAFF RESPONSE: Staff recognizes that the proposed language creates additional development requirements for rehabilitation. However, a policy objective of the Department is to provide as many accessible units to Texans as possible.

§11.201(2) Multifamily Direct Loan, HOME ARP Minimum review period

COMMENT SUMMARY: Commenter 17 recommends removing the 120-day minimum review period for Multifamily Direct Loan applications and replacing it with a minimum 60-day review period. Commenter 17 cites the potential for efficiency improvements for applications applying for Multifamily Direct Loan financing. Commenters 17 provided language to this effect.

STAFF RESPONSE: Staff acknowledges Commenter 17's suggestion to shorten the minimum review period for Multifamily Direct Loan HOME ARP deals and appreciates the desire for efficiency, but Staff currently does not have any plans to revise this section for the 2024 QAP.

§11.203(2) Public Notifications

COMMENT SUMMARY: Commenters 6, 7, 26, 38, 42, 45, 46, 65, and 74 request clarification as to whether email is an acceptable form of notification. Commenters 6, 7, 26, 38, 42, 45, 46, 65, and 74 note a discrepancy between the QAP published in the *Texas Register* and a blackline posted to the Department's website.

Commenter 28 suggests amending 11.203 to require the notification of existing tenants of rehabilitations as well as registered and unregistered tenant organizations.

STAFF RESPONSE: Staff confirms that email is an acceptable form of notification, and is no longer removed from the 2024 QAP.

Staff appreciates and acknowledges Commenter 28's suggestion of requiring notification to existing tenants in rehabilitation developments and a recognition of tenant organizations, but Staff is unable to accommodate this for the 2024 QAP as it constitutes a substantial change and would suggest discussing in the 2025 Roundtables.

§11.204(6)(E) Financing Narrative

COMMENT SUMMARY: Commenter 46 suggests removing 9% LIHTC projects from Match Requirements. Commenter 46 believes this is unnecessary and will lead to further financial burden.

STAFF RESPONSE:

A responsive revision has been made. HOME Match is no longer required for HTC Competitive Applicants.

§11.204(15) HOME Match Requirements

COMMENT SUMMARY: Commenter 4, 6, 8, 10, 11, 12, 13, 15, 16, 17, 19, 26, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 58, 61, 62, 63, 65, 69, 73, 74, 75, 77, and 79 suggest removal of the HOME Match Requirement for all developments citing concerns regarding organizational structure, the closing process, and a general disruption to the Tax Credit Program. Commenters 4, 13, 15, 17, 19, 27, 39, and 73 cite concerns for vertically integrated groups whom often have entities that are barred from contributing to HOME Match. Commenter 17 suggests that department staff will not have the in-depth knowledge needed to an increasing number of deals that qualify as HOME Match. Commenter 17 also notes that requiring entities to donate labor/materials on deals that are already financially constrained. Commenter 4, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 19, 26, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 42, 45, 46, 47, 48, 49, 50, 51, 52, 53, 58, 61, 62, 63, 69, 73, 74, 75, 77, and 79 suggest removing this requirement and revisiting it in the 2025 QAP Roundtables.

Commenters 31, 32, 34, 38, 47, and 49 recommend TDHCA could meet its federal requirements by using the tax exemption from 4% applications citing use in the past by the Department.

STAFF RESPONSE:

Staff acknowledges Commenter 4, 6, 8, 10, 11, 12, 13, 15, 16, 17, 19, 26, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 58, 61, 62, 63, 65, 69, 73, 74, 75, 77, and 79's suggestion to remove the HOME Match Requirement for all developments. Staff understands concerns regarding the implementation of this item but emphasizes the Department must nonetheless meet its federal obligations. Staff does not plan to fully remove the requirement; however, staff has made a responsive change to the section by removing the requirement for HTC Competitive Applications to provide a HOME Match contribution.

In regards to Commenter 17's concern surrounding the in-depth knowledge required to manage an increasing number of deals that qualify as HOME Match, staff believes this is a program administration issue and no revision to the rule can be made. Similarly staff acknowledges Commenter 17's concerns regarding financially constrained deals and will monitor the issue, but no responsive revision can be made.

Staff appreciates the suggestion of Commenters 31, 32, 34, 38, 47, and 49 to meet its federal requirements by using the tax exemption from 4% applications but staff does not believe this solution is sufficient.

§11.302(d)(4) Debt Coverage Ratio

COMMENT SUMMARY: Commenters 4, 8, 10, 11, 13, 15, 17, 19, 27, 29, 30, 37, 39, 44, 46, 48, 50, 52, 53, 54, 58, 61, 62, 63, 69, 73, 77, and 79 are opposed to an interest rate cap of 1% on Related Party Loans and suggests new language linking the underwritten rate to the Applicable Federal Rate (AFR). Commenter 4, 8, 10, 11, 13, 15, 29, 30, 37, 50, 53, 58, 62, 63, 69, 73, 77, and 79 suggested new language to this effect. Commenter 17 advises that it would be beneficial to allow involved parties to negotiate these terms to maximize the benefit to these developments. Commenter 54 discusses the complicating factor of true debt tests as they relate to the tax implications of related party debt. Commenter 59 outlines the various negative IRS implications of a 1% rate.

Commenter 12, 16, 17, and 39 recommend deletion of the new proposed language citing negative tax implications and debt coverage obligations. Commenter 12, 16, 17, and 54 support continuing to use language from the 2023 QAP.

Commenter 46 suggests if all DCR requirements are met at application, it should be allowed flexibility thereafter up to the 1.50 debt coverage ratio for financial flexibility in order to close a transaction.

STAFF RESPONSE:

Staff acknowledges Commenters 4, 8, 10, 11, 12, 13, 15, 16, 17, 19, 27, 29, 30, 37, 39, 44, 46, 48, 50, 52, 53, 54, 58, 61, 62, 63, 69, 73, 77, and 79, Staff will make a responsive change and revert back to the 2023 QAP language.

In regards to the suggestion of Commenter 46, staff believes the suggested language constitutes a material change and would substantially alter program policies. No change can be made to the 2024 QAP as a result.

§11.302(e)(6) Developer Fee

COMMENT SUMMARY: Commenter 33 recommends making no change to the 2023 QAP language citing construction and financing considerations.

Commenter 61 suggests revising the Developer Fee methodology for Bond deals citing existing economic conditions and broad language that may be potentially harmful to vertically integrated groups. Commenter 61 references administrative fees and highlights development team structures than may be impacted by these proposed rules.

STAFF RESPONSE: Staff acknowledges Commenter 33's suggestion to keep 2023 language in place. Staff believes these concerns are largely addressed in the current draft of the 2024 QAP.

Staff also appreciates Commenter 61's suggested revision to the language, but Staff believes this change is too substantial for the 2024 QAP and recommends bringing this topic up in the 2025 QAP Roundtables.

§11.1001 - 11.1009 Subchapter F. State Housing Tax Credit

COMMENT SUMMARY: Commenter 5 suggests allocating State Housing Tax Credits according to the statutory language and the intent of the legislation and not according to the fiscal note interpretation referenced in the preamble. Commenter 5 suggests that the State Housing Tax Credit is particularly important to rural communities.

Commenter 5 suggests amending the section referring to Priority Allocations to include criteria related to the year of construction, size of the development, and target population preference.

Commenter 5 suggests significantly reworking or removing §11.1008 entirely. Commenter 5 suggests prioritizing 30% units will create an adverse effect for rural developments.

Regarding the Set Aside for Previously Awarded Developments for Competitive HTC Applications, Commenter 17 suggests adding clarifying language to include all Developments that are likely to need this financial assistance. Commenter 17 suggested language to this effect.

Commenters 28, 41, and 43 support the prioritization of 30% units citing an existing shortage and greater need for these units in Texas. Commenter 28 supports using the State Housing Tax Credit to incentivize 4% HTC applications that do not have undesirable site features or neighborhood risk factors.

Commenter 64 has concerns about the allocation of State Housing Tax Credits to Bond deals citing that the "first come first serve" incentive won't encourage development of 30% units. Commenter 64 suggests the Department take a different approach.

Commenters 66 and 68 support the prioritization of 30% units with this rule.

STAFF RESPONSE: Staff acknowledges the concerns of Commenter 5 regarding the interpretation of statutory changes related to the State Housing Tax Credit and its impact on rural communities. Staff does not believe the rule as written conflicts with any interpretation of the language. The rule does not contemplate the amount available to distribute and thus no responsive change will be made.

In regards to Commenter 17, HB 1058 sufficiently details eligability for the Set Aside for Previously Awarded Developments for Competitive HTC Applications.

Staff appreciates the support from Commenters 28, 41, 43, 66, and 68 on the prioritization of 30% units with the State Housing Tax Credit legislation. In regards to the suggestion of Commenter 28 regarding Undesirable Site Features and Neighborhood Risk factors staff recommends discussing this issue in the 2025 QAP Roundtables.

In response to commenter 64, staff believes changing the prioritization of distributing the State Housing Tax Credits associated with 4% application is too substantive of a change that would likely solicit additional public comment. Moreover, since this is a new program, staff believes it is worth seeing see how much interest there is prior to making sweeping changes to how the funds are prioritized.

Other Comments Received

COMMENT SUMMARY:

Commenter 28 requests the department set a limit on a property's ability to fill 30% AMI units with voucher holders. Commenter 28 also recommended improvements to TDHCA Data Availability, specifically the addition of more columns on the property inventory. Commenter 46 requests an updated MFDL Unit Calculator to include the HOME Match-Eligible calculation.

STAFF RESPONSE: In regards to Commenter 28 and their suggestion of a new limit on voucher holders in 30% units, staff is appreciative of the concern but feels tenant selection criteria is not contemplated in the 2024 QAP. Items such as this may be added as new sections in later rules, but must be introduced and heavily discussed early in the process, as they constitute a substantial change.

Staff acknowledges Commenter 28 and 46 on their requests however these items are in regard to program administration and no responsive change within the rule is possible.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§11.1. General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive Housing Tax Credits, the state Housing Tax Credit, and the issuance of Determination Notices for non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity and pursuant to Tex. Gov't Code, Chapters 171 and 233, the Department is assigned responsibility for the adoption of rules relating to the State Housing Tax Credit. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022 and §42(m)(1)(B) of the Code. Unless otherwise specified, certain provisions in this section and §§11.2 - §11.4 of this title also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Subchapters B - E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program, except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

(b) Due Diligence and Applicant Responsibility.

(1) Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP, or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature, and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.

(2) Developments with Existing LURAs. Applicants proposing to submit an Application requesting an award of Housing Tax Credits or a Direct Loan for a Development that already has a LURA in place should review the existing LURA(s) on the property to ensure there are no conflicts with the proposed Application. Where an Applicant has identified a potential conflict, it is incumbent upon the Applicant to consult with staff regarding the steps that may be necessary to resolve the conflicts. This may include, but is not limited to, an Application amendment or LURA amendment, a waiver, or other action that may necessitate additional staff time for review or a Board determination. Depending on the timing constraints associated with the proposed Application, Applicants should be mindful that resolving issues relating to the existing LURA and for Direct Loans the existing Contract may not coincide with the timing needed for a new award if such requests are not submitted early in the process. A copy of the existing LURA must be included in the Application.

(c) Competitive Nature of Program. Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Competitive Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes, into a building which will be used, in

whole or in part, for residential purposes. Adaptive Reuse requires that at least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office, or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiency--Information requested by Department staff to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Administrative Deficiencies may be issued at any time while the Application or pre-application is under consideration by the Department, including at any time after award or allocation and throughout the Affordability Period. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. Applicants must intend that the pre-Application or Application is the final version to be reviewed by staff, and should not rely on the Administrative Deficiency process when applying for funding.

(A) The following issues will be treated by Department staff as Administrative Deficiencies that are curable through the Deficiency process only if the issues, when taken as a whole, do not constitute a Material Deficiency as defined in §11.1(d) of this chapter:

(i) For Applications that are substantially complete, a minor quantity of missing signatures, documents, or similar clerical matters, the curing of which will not create change within the Application, unless the missing documentation is required to have existed as of the appropriate deadline and did not, or is otherwise not susceptible to resolution. For Competitive HTC or Direct Loan Applications, this may include documents submitted to substantiate points claimed in the Application only if:

(I) The documents can be readily identified to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points; or

(II) For scoring items that are predicated solely on third-party data, characteristics inherent to the proposed Development Site, or are otherwise not influenced by the actions of the Applicant, the Application's eligibility for these points can be clearly established to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points.

(ii) Inconsistencies that exist between facts presented in the Application and/or its supporting documentation. A discrepancy between the requested points and the points supported by the Application will not be treated as an inconsistency if the facts presented within the Application are otherwise consistent.

(iii) At the Department's sole discretion, additional information that is necessary to assist in the review of the Application.

(B) The following issues will not be treated by Department staff as Administrative Deficiencies that are curable through the Deficiency process:

(i) Any matter that will materially change the Application, except for matters that must be addressed in accordance with 10 TAC §11.1(d) (relating to the definition of Administrative Deficiency), in which case staff will direct the Applicant to resolve the inconsistency in the manner that creates the least change within the Application. Under no circumstance can the resolution of an Administrative Deficiency increase the Application's score from what was initially requested.

(ii) Changes to the Application that are submitted only to qualify for points claimed in the Application.

(iii) Except at staff's written request, changes to the Application that alter the amount of Housing Tax Credits or Direct Loan requested.

(C) In all cases, final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Department Staff and Board.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative, or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction, and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules, as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be:

(i) nine percent for 70% present value credits; or

(ii) four percent for 30% present value credits.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or Chapters 12 or 13 of this title and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter --A document that may be issued to an awardee of a Direct Loan before the issuance of a Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than eight feet; is self-contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than two feet deep and three feet wide and high enough to accommodate five feet of hanging space. A den, study, or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom. Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered will be exempt from the bedroom and closet width, length, and square footage requirements. Supportive Housing Developments will be exempt from the bedroom and closet width, length, and square footage requirements.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §11.907 of this title (relating to Carryover Agreement General Requirements and Required Documentation).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements, or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(18) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment Notice (also referred to as Commitment)--An agreement issued pursuant to §11.905(a) of this title (relating to General Information for Commitments or Determination Notices), setting forth the terms and conditions under which Competitive Housing Tax Credits from the Department will be made available. A Commitment or Commitment Notice does not mean commitment of federal funds under the Direct Loan Program.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Contract is executed between the Department and Development Owner. The Department's Commitment of Funds may not align with commitments made by other financing parties.

(21) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, libraries, computer labs, classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common Area does not include individualized garages, maintenance areas, equipment rooms, or storage.

(22) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services, and travel patterns), age, Unit amenities, utility structure, and common amenities.

(23) Competitive Housing Tax Credits --Sometimes referred to as Competitive HTC. Tax credits available from the State 9% Housing Credit Ceiling.

(24) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of 15 taxable years, beginning with the first taxable year of the credit period, pursuant to Code, §42(i)(1).

(25) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(26) Contract--A legally binding agreement between the Development Owner and the Department, setting forth the terms and conditions under which Multifamily Direct Loan Program funds will be made available.

(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state, or local governmental agency.

(28) Contractor--See General Contractor.

(29) Control (including the terms "Controlling," "Controlled by," and "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the cor-

poration, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder.

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent.

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries.

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(30) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of this chapter (relating to Operating Feasibility).

(31) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter (relating to Feasibility Conclusion).

(32) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(33) Determination Notice--A notice issued by the Department to the Development Owner of a Tax- Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(34) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(35) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member, or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(36) Developer Services--A scope of work relating to the duties, activities, and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including, but not limited to:

(A) Site selection and purchase or lease contract negotiation;

(B) Identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;

(C) Coordination and administration of activities, including the filing of applications to secure such financing;

(D) Coordination and administration of governmental permits, and approvals required for construction and operation;

(E) Selection and coordination of development consultants including architect(s), engineer(s), third- party report providers, attorneys, and other design or feasibility consultants;

(F) Selection and coordination of the General Contractor and construction contract(s);

(G) Construction oversight;

(H) Other consultative services to and for the Owner;

(I) Guaranties, financial, or credit support if a Related Party or Affiliate; and

(J) Any other customary and similar activities determined by the Department to be Developer Services.

(37) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units that is financed under a common plan, and that is owned by the same Person for federal tax purposes, and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6)).

(A) Development will be considered to be a scattered site if the property where buildings or amenities are located do not share a common boundary and there is no accessible pedestrian route that the Development Owner controls (transportation in a motor vehicle will not meet the requirement for an accessible route).

(B) A Development for which several parcels comprise the Development Site and are separated only by a private road controlled by the Development Owner, or a public road or similar barrier where the Development Owner has a written agreement with the public entity for at least the term of the LURA stating that the accessible pedestrian route will remain, is considered contiguous. The written agreement with the public entity must be in place by the earlier of the 10% Test for Competitive HTC, the Determination Notice date for a Tax-Exempt Bond Development issued by the Department, Cost Certification for Tax-Exempt Bond Developments where the Determination Notice is issued administratively, or the execution of the Multifamily Direct Loan Contract, as applicable.

(38) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents, as required by the program.

(39) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation or Commitment with the Department. (§2306.6702(a)(7)).

(40) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service or the Depart-

ment to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA, including access to that area or areas through ingress and egress easements.

(41) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management, or continuing operation of the Development, including any Development Consultant and Guarantor.

(42) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), HOME American Rescue Plan (HOME-ARP), Tax Credit Assistance Program Repayment Funds (TCAP RF), Texas Housing Trust Fund (THTF), or other programs available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule), the NOFA under which they are awarded, the Contract, and the loan documents. The tax-exempt bond program is specifically excluded.

(43) Educational Provider-- A school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter (relating to Operating Feasibility). The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Existing Residential Development--Any Development Site which contains any type of existing residential dwelling at any time as of the beginning of the Application Acceptance Period.

(51) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) The date specified in the LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(52) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(53) Forward Commitment--the issuance of a Commitment of Housing Tax Credits from the State Housing Credit Ceiling for the calendar year following the year of issuance, made subject to the availability of State Housing Credit Ceiling in the calendar year for which the Commitment has been made.

(54) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) or (B) of this paragraph:

(A) Any subcontractor, material supplier, or equipment leasor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) If more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment leasors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments, and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter (relating to Feasibility Conclusion).

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter (relating to Market Analysis Rules and Guidelines).

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(62) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs, and contingency.

(63) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(64) HOME Match Eligible Unit--A Unit in the Development that may or may not be assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92 and CPD Notice 97-03 or subsequent HUD guidance.

(65) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(66) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(67) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department and the Board, if applicable, determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period.

(68) HTC Development (also referred to as HTC Property)--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(69) HTC Property--See HTC Development.

(70) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(71) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME and NHTF funding and progress, and which may be used for other sources of funds as established by HUD.

(72) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(73) Low-Income Unit (also referred to as a Rent Restricted Unit)--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(75) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand, and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(76) Market Analyst--A real estate appraiser or other professional satisfying the qualifications in §11.303(c) of this chapter, and familiar with the subject property's market area who prepares a Market Analysis.

(77) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services, and travel patterns), age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(78) Market Study--See Market Analysis.

(79) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements may be considered material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole, would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(80) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents. The Manual is not a rule and is provided only as good faith guidance and assistance.

(81) National Standards for the Physical Inspection of Real Estate (NSPIRE)-- As developed by the Real Estate Assessment Center of HUD.

(82) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter (relating to Operating Feasibility).

(83) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(84) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included in NRA if the storage area shares a wall with the residential living space. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(85) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(86) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(87) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(88) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(89) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for 12 calendar months.

(90) Owner--See Development Owner.

(91) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(92) Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) A record of such an impairment; or

(C) Is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(93) Physical Needs Assessment--See Scope and Cost Review.

(94) Place--An area defined as such by the United States Census Bureau which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town, or village will be considered as part of the incorporated area. Areas that are annexed by a city, town, or village through limited-purpose annexation are considered to be part of the incorporated area of that city, town, or village for purposes of this chapter. The Department may provide a list of Places for reference.

(95) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(96) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(97) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(98) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(99) Primary Market Area (PMA)--See Primary Market.

(100) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(101) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted Unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(102) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

(103) Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development.

(104) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(105) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this title (relating to Qualified Contract Requirements).

(106) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(107) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(108) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42(h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(109) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling interest in the Development.

(110) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(111) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition, or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves un-

der §11.302(d)(2)(I) (relating to Operating Feasibility). More specifically, Rehabilitation is the repair, refurbishment, or replacement of existing mechanical or structural components, fixtures, and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible, and may include the addition of: energy efficient components and appliances; life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(112) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units; and

(B) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(113) Report--See Underwriting Report.

(114) Request--See Qualified Contract Request.

(115) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(116) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(117) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B) of this chapter.

(118) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(119) Scoring Notice--Notification provided to an Applicant of the score for their Application after staff review. More than one Scoring Notice may be issued for a Competitive HTC or a Direct Loan Application.

(120) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(121) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(9) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(122) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(123) State Housing Credit Ceiling--The aggregate amount of Competitive Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

(124) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(125) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (F) of this paragraph:

(A) Be intended for and targeting occupancy for households in need of specialized and specific non- medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Acceptance Date for Multifamily Direct Loan Applications;

(ii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period;

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses;

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period; and

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow §1.204 of this title (regarding Reasonable Accommodations), and:

(I) The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least, for:

(-a-) Temporary denial for a minimum of seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in §102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) Temporary denial for a minimum of three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution;

(II) The criminal screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. In addition, the criteria must include provision for individual review of permanent or temporary denials if the conviction is more than 7 years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last 7 years. The criteria must prohibit consideration of any previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records; and

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect;

(C) Where supportive services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with physical, intellectual, or developmental disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis;

(D) Supportive services must meet the minimum requirements provided in clauses (i) - (iv) of this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) must include readily available resident services or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed, except for construction financing, or a deferred-forgivable or deferred-payable construction-to-permanent Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions. A loan from a local government or instrumentality of local government is permissible if it is a deferred-forgivable or deferred-payable construction-to-permanent loan, with no foreclosure provisions or scheduled or periodic repayment provisions, and a maturity date after the end of the Affordability Period. For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations. In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government funds and the foreclosure provisions are triggered only by default on non-monetary default provisions. Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of Work Out Development approved by the Asset Management Division; or

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or project-based operating subsidies for 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in subclauses (I) - (VI) of this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VI) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

(126) Target Population--The designation of types of housing populations shall include Elderly Developments and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(127) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for Housing Tax Credits and which receives a portion of its financing from the proceeds of Tax-Exempt Bonds which are subject to the state volume cap as described in Code, §42(h)(4).

(128) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(129) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's website (www.tdhca.state.tx.us).

(130) Third Party--A Person who is not:

(A) An Applicant, General Partner, Developer, or General Contractor;

(B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;

(C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) In Control with respect to the Development Owner.

(131) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee, and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(132) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, HOME-ARP or TCAP RF, and not layered with Housing Tax Credits that includes living Units with more limited individual kitchen facilities and is:

(A) Used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless to independent living within 24 months; and

(B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(133) Underwriter--The author(s) of the Underwriting Report.

(134) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(135) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may, but are not required to, be used to satisfy the requirements of the applicable rule.

(136) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

(137) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, bathrooms, features, or a square footage difference equal to or more than 120 square feet.

(138) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(139) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(140) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90% occupancy level for at least 90 days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends, and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(141) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described in paragraph (117)(A) of this subsection, definition of Rural Area. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

(142) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this title (relating to Utility Allowances).

(143) Work Out Development--A financially distressed Development for which the Owner or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of August 1 of the year prior to Application, unless specifically otherwise provided in

federal or state law or in the rules, with the exception of census tract boundaries for which 2020 Census boundaries will be used, unless otherwise noted. All references to census tracts throughout this chapter will mean the 2020 Census tracts, unless otherwise noted. Applicants may need to provide Census tract information based on the 2020 boundaries as well as the ones defined by 2010 boundaries, if data based on 2020 tract boundaries are not available as of August 1, 2023 for the specific item in question. All American Community Survey (ACS) data must be 5-year estimates, unless otherwise specified and it is the ACS data that will be used for population determination. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as NeighborhoodScout, the data available after August 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date. All references to QCTs throughout this chapter mean the 2024 QCTs designated by HUD to be effective in 2024.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Deadlines, with respect to both date and time, cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(g) Documentation to Substantiate Items and Representations in a Competitive HTC Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

(h) Board Standards for Review. Some issues may require or benefit from Board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(i) Scattered Site Applications. As it relates to calculating any distances (tie determinations, proximity to features, etc.), year of initial construction, or determining satisfaction of scoring, the site that scores or ranks the lowest will be the site used for that analysis. There is no opportunity for higher scoring or performing sites to elevate the score or performance of other sites in the scattered site Application.

(j) Public Information Requests. Pursuant to Tex. Gov't Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(k) Responsibilities of Municipalities and Counties. In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(l) Request for Staff Determinations. Where the requirements of this chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter (relating to Appeals Process), if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged.

§11.2. Program Calendar for Housing Tax Credits.

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Figure: 10 TAC §11.2(a)

(b) Tax-Exempt Bond and Direct Loan-only Application Dates and Deadlines. Applicants are strongly encouraged to submit the required items well in advance of published deadlines. Other deadlines may be found in Chapters 12 and 13 or a NOFA.

(1) Full Application Delivery Date. The deadline by which the Application must be received by the Department. For Direct Loan Applications, deadlines including the Application Acceptance Date will be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201 of this chapter (relating to Procedural Requirements for Application Submission).

(2) Administrative Deficiency Response Deadline. Such deadline shall be five business days after the date on the deficiency notice, unless extended as provided for in §11.201(6) of this chapter (relating to Deficiency Process).

(3) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR), Appraisal (if applicable), Market Analysis and the Feasibility Report (if applicable)). For Direct Loan Applications, the Third Party reports meeting the requirements described in §11.205 of this title (relating to Required Third Party Reports) must be submitted in order for the Application to be considered complete, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department pursuant to §11.201(2) of this chapter.

(4) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting or prior to the issuance of the Determination Notice, as applicable. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(5) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3. Housing De-Concentration Factors.

(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million, if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate §2306.6711(f), the lower scoring of the Applications, including consideration of tie-breakers, will not be reviewed unless the higher scoring Application is terminated or withdrawn. The higher scoring Application will take priority regardless of the Set-Asides under which the Applications are submitted.

(2) This subsection does not apply if an Application is located in an area that meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient.

(c) Twice the State Average Per Capita (Competitive HTC and Tax-Exempt Bond Only). As provided for in Tex. Gov't Code §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Only Application Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule (Competitive HTC and Tax-Exempt Bond Only). (§2306.6703(a)(3)).

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) A Development that serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development that has received an allocation of Housing Tax Credits or private activity bonds, or a Supplemental Allocation of credits, for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development in subparagraph (B) of this paragraph has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed Development:

(A) That is using federal HOPE VI (or successor program) funds received through HUD;

(B) That is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) That is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) That is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) That is located in a county with a population of less than one million;

(F) That is located outside of a metropolitan statistical area; or

(G) That the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Only Development Dates and Deadlines, as applicable.

(3) Where a specific source of funding is referenced in paragraphs (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has adopted a resolution that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter or Resolutions Delivery Date in §11.2(b) of this chapter, as applicable.

(f) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring of the Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring of the Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under §11.5(2) of this chapter (relating to USDA Set-Aside) or §11.5(3) (relating to At-Risk Set-Aside).

§11.4. Tax Credit Request, Award Limits, and Increase in Eligible Basis.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $6 million in a single Application Round. Prior to posting the agenda for the last Board meeting in June, an Applicant that has Applications pending for more than $6 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the $6 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the $6 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate, or Guarantor solely because it:

(1) Raises or provides equity;

(2) Provides "qualified commercial financing";

(3) Is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) Receives fees as a consultant or advisor that do not exceed $200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or $2,000,000 whichever is less. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the annual release of the Internal Revenue Service notice regarding the credit ceiling (2306.6711(h)). For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. While the Housing Tax Credit request amount for an Application may be reduced through the underwriting process or at the written request of staff, the Department shall otherwise consider the request amount final. The Tax Credit request amount cannot be changed through the Administrative Deficiency process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b)).

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to 30% in Eligible Basis provided they meet any one of the criteria identified in paragraphs (1) - (4) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as determined by the Department, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20% Housing Tax Credit Units per total households in the tract as reflected in the Department's current Site Demographic Characteristics Report. New Construction or Adaptive Reuse Developments located in a QCT

that has in excess of 20% Housing Tax Credit Units per total households are not eligible for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging the Development is located in a census tract that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments where this rule is triggered are eligible for the boost and are not required to obtain such a resolution from the Governing Body. An acceptable, but not required, form of resolution may be obtained in the Multifamily Uniform Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Application Dates and Deadlines), as applicable. The Application must include a census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area (SADDA)) (based on Small Area Fair Market Rents as determined by the Secretary of HUD) or for Rural areas located in a Difficult Development Area (DDA) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA or DDA map that clearly shows the proposed Development is located within the boundaries of a SADDA or DDA as applicable.

(3) For Competitive HTC only, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

(A) The Development is located in a Rural Area;

(B) The Development is entirely Supportive Housing and is in accordance with §11.1(d) of this chapter (relating to the definition of Supportive Housing);

(C) The Development meets the criteria for the Opportunity Index as defined in §11.9(c)(5) of this chapter (relating to Competitive HTC Selection Criteria);

(D) The Applicant elects to restrict 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;

(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or

(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892). Pursuant to Internal Revenue Service Announcement 2021-10, the boundaries of the Opportunity Zone are unaffected by 2020 Decennial Census changes.

(4) For Tax-Exempt Bond Developments, as a general rule, a QCT, non-metro DDA or SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. The Department acknowledges guidance contained in the Federal Register regarding effective dates of QCT, non-metro DDA and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT, non-metro DDA or SADDA designation is not effective may be underwritten to include the 30% boost, provided a complete application was submitted to the bond issuer in the year the QCT, non-metro DDA or SADDA designation was effective. Where this is the case, the Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted. If the issuer is a member of the organizational structure then such certification must come from the bond counsel to the issuer.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)).

This section identifies the statutorily-mandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set- aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)). At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the manager of the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Manager of the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-aside is deemed to be applying under that Set-aside unless their Application specifically includes an affirmative election to not be treated under that Set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election or to not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)). 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At- Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111 (d-4)). A proposed or

Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under §§514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. §§1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural Area.

(B) All Applications that are eligible to participate under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to participate under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702).

(A) At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) 5% of the State Housing Credit Ceiling associated with this Set- aside will be given as priority to Rehabilitation Developments under the USDA Set-aside; any Applications submitted under the USDA Set-Aside in excess of this 5% priority may compete within the At-Risk Set-Aside only if they meet the definition for an At-Risk Development and have submitted sufficient supporting documentation within the Application to demonstrate qualification as an At-Risk Development. Applications submitted under the USDA Set-Aside in excess of the 5% priority that do not meet the definition for an At-Risk Development do not qualify for the At-Risk Set-Aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements:

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §1715l);

(II) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(III) Section 202, Housing Act of 1959 (1 2 U.S.C. §1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart C; (VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486);

(VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(VIII) §42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment.

(iii) Developments with existing Department LI-HTC LURAs must have completed all applicable Right of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the requirements under clause (i), (ii) or (iii) of this subparagraph and also meet the stipulations noted in clause (iv) of this subparagraph:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished within the two-year period preceding the date the Application is submitted, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(iii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under subsection (a) of this section does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing Units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose at least the same number of restricted Units (the Applicant may, however, add market rate Units, and other rules, limitations, approvals, and potential conflicting requirements based on fund source, number and unit type may be implicated by creating more units than the original number); and

(iii) the new Development Site must either:

(I) qualify for points on the Opportunity Index under §11.9(c)(5) of this chapter (relating to Competitive HTC Selection Criteria); OR

(II) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7) of this chapter. Development Sites that cross jurisdictional boundaries must provide such resolutions from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years of July 31 of the year the Application is submitted, and must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under Code, §42. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the Right of First Refusal. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. Competitive HTC Allocation Process.

This section identifies the general allocation process and the methodology by which awards during the Application Round are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than $600,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve $600,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $6 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter (relating to Tax Credit Request, Award Limits and Increase in Eligible Basis). The Department will publish on its website on or before December 1 of each year, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force majeure provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. Consistent with the allocation process described in this section, credits that are returned to the USDA or At-Risk Set-Asides are not eligible to flow to another subregion or set-aside unless no eligible Applications remain in the Set-Aside to which the credits were returned. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications reviews will be conducted in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first set of reviews will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the USDA Set-Aside requirement.

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter (relating to At-Risk Set-Aside) are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the

last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps.

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application with the priorities in this subparagraph first prioritized. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. In Urban subregions in which credits available do not allow for all of the priorities in clauses (iii) to (v) of this subparagraph to be achieved, the priorities will be followed in the order reflected in this subparagraph.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website..

(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an Urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(iii) In Urban subregions, not including the calculation of At-Risk Applications awarded, no more than 50% of all credits in a subregion will be awarded to Applications proposing Rehabilitation or Reconstruction, unless only Rehabilitation or Reconstruction Applicants are eligible in the subregion.

(iv) In Urban subregions containing a county with a population that exceeds 950,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is located in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and funds from the HUD Choice Neighborhood awardee are reflected in the Application's Sources and Uses.

(v) In Urban subregions containing a county with a population that exceeds 1,000,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that elects to provide a High-Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site that meets the requirements of items (a)-(c) of subparagraph (C)(i)(I) of §11.101(b)(5)-(related to Common Amenities). Developments serving a Target Population that is Elderly or Supportive Housing are not eligible for this item.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural subregion as compared to the subregion's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected or eliminated in a prior step) in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the Regional Allocation Formula (RAF) for Elderly Developments, within an Urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2023 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10% Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the Set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-aside statewide are selected to meet the minimum requirements of the Nonprofit Set- Aside. This step may cause some lower scoring Applications in a subregion to be selected instead of a higher scoring Application not participating in the Nonprofit Set-aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the next Application to award. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they

were originally awarded. The first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to ensure to the extent possible that available resources are allocated by December 31. (§2306.6710(a) - (f); §2306.111).

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially feasible in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(1) For Applications funded through the USDA Set-Aside

(A) Applications proposed to rehabilitate the property with the earliest year of initial construction as a residential Development.

(i) Only the year of initial construction will be taken into consideration. The specific date of construction or conversion will not affect this tie breaker. A tie will persist if two Applications have the same year. In the event that a Development was constructed over a number of years, the earliest year will be used.

(ii) Year submitted must be evidenced by the initial USDA loan documentation. If such documentation does not exist or cannot be provided, the Application is ineligible for this tiebreaker.

(B) Once 5% or more of the State Housing Credit Ceiling has been allocated to USDA developments, no further applications with USDA financing shall receive preference under this tie breaker but may receive preference under subsections (2) and (3) of this section.

(2) For all other competitive Applications

(A) Applications proposed to be located in closest proximity to the following features as of the Full Application Delivery Date:

(i) A park, or a parcel of land dedicated for public use by a Municipal, County, State, or Federal entity and used as parkland or for a recreational purpose. This feature must have been designated by the relevant authority one year prior to the Full Application Delivery Date.

(ii) The elementary school of attendance. In districts with district-wide enrollment or choice, the Applicant shall use the closest elementary. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools, the closest campus of attendance that serves any grade from kindergarten to fifth grade shall be used.

(iii) A full service grocery store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items.

(iv) A Public Library with indoor space, physical books that can be checked out and that are of general and wide-ranging subject matter, computers and internet access, and that is: Open 35 hours or more per week in an Urban Area and 25 hours or more per week in a Rural Area. The library must not be age or subject-restricted and must be at least partially funded with government funding.

(B) The linear measurement will be performed from closest parcel boundary of the Development Site to closest parcel boundary of each feature. The Department may prescribe a specific form to be used for the calculation of these distances using GPS coordinates provided by the Applicant.

(C) In calculating this proximity, each feature's distance will be required for submittal, with the sum of the three closest features being used to produce the result. The Application with the lowest sum of proximity will receive preference.

(D) In the event that one of the top three features is disqualified due to not conforming to the definitions provided or a substantial misrepresentation of distance from the development, the fourth will be used as an opportunity to replace the disqualified feature. If multiple features are disqualified, the Application will not receive preference. If the competing application(s) also has multiple disqualified features the tie will persist.

(E) In the event that the sum proximities described under §11.7(2)(B) for two tied Applications differ by 100 or fewer feet, the tie will persist.

(3) If the tie persists, preference will be determined using this final tiebreaker. Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded 15 or fewer years ago. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory from the Site Demographics Characteristics report from the current year. The specific month and date of the award are disregarded for this analysis. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the 13 state service regions, subregions, and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site and for each Site Control document.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in §11.2(a) of this chapter.

(b) Pre-Application Threshold Criteria. Pursuant to Tex. Gov't Code §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the Competitive HTC pre-application in the form prescribed by the Department which identifies or contains at a minimum:

(A) Site Control meeting the requirements of §11.204(9) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, or Rural);

(E) Total Number of Units proposed;

(F) Census tract number or numbers in which the Development Site is located, and a map of the census tract(s) with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity;

(I) If points are to be claimed related to Underserved Area and/or Proximity to Jobs, documentation supporting those point elections;

(J) The name and coordinates of the nearest park, grocery store, and library meeting the criteria established in 10 TAC §11.7(2) as well as the name and coordinates of the elementary school of attendance;

(K) For Applications funded through the USDA Set-Aside; year of initial construction as evidenced by the initial USDA loan documentation;

(L) If a high-quality Pre-Kindergarten is to be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application; and

(M) The name and address of the nearest Housing Tax Credit assisted Development that serves the same Target Population and was awarded 15 or fewer years ago following the calculation established in 10 TAC §11.7(3) according to the Department's property inventory tab of the Site Demographic Characteristics Report.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704).

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development, where a reasonable search for applicable entities has been conducted.

(B) Notification Recipients. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format included in the Public Notification Template provided in the Uniform Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted; however, a mailed notification that is addressed to the entity or office-holder rather than a specific person is acceptable so long as it is mailed to the correct address and otherwise meets all requirements. Between the time of pre-application (if made) and full Application, the boundaries of an official's jurisdictions may change. If there is a change in jurisdiction between pre-application and the Full Application Delivery Date that results in the Development being located in a new jurisdiction, additional notifications must be made at full Application to any entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct entity constitutes notification. No later than the date the pre-application is submitted, notification must be sent to all of the entities prescribed in clauses (i) - (viii) of this subparagraph:

(i) Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site.

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) - (IX) of this clause:

(I) The Applicant's name, address, an individual contact name and phone number;

(II) The Development name, address, city, and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) The physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise, etc.);

(VI) The approximate total number of Units and approximate total number of Low-Income Units;

(VII) The residential density of the Development, i.e., the number of Units per acre;

(VIII) Information on how and when an interested party or Neighborhood Organization can provide input to the Department; and

(IX) Information on any proposed property tax exemption.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability), will be eligible for pre-application points. The order and scores of those

Developments released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the pre-application Submission Log. Inclusion of a pre-application on the pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination on or before February 13, 2023. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under §11.9(e)(1)(F) of this chapter. Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Applications will only be reviewed for point items specifically elected in the Application. Except for scoring items that are awarded based on tiered categories, if an Application is determined to not qualify for the points elected, Department staff will not evaluate the Application to determine whether it might qualify for alternative points.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); 2306.6725(b)(1); §42(m)(1)(C)(iii) and (ix)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements:

(i) five-hundred (500) square feet for an Efficiency Unit;

(ii) six-hundred (600) square feet for a one Bedroom Unit;

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), or (C) of this paragraph.

(A) HUB. The ownership structure contains a HUB or HUBs certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date. The HUB or HUBs must have some combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB or nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories. Any Application that includes one or more HUBs must include a narrative description of each of the HUB's experience directly related to the housing industry.

(i) The HUB must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal or officer of the HUB cannot be a Related Party to or Affiliate, including the spouse, of any other Principal or officer of the Applicant, Developer or Guarantor (excluding another Principal of said HUB), regardless of Control. (2 points).

(iii) The HUB must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the HUB or nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer or Guarantor (excluding another Principal of said HUB or Nonprofit Organization). (1 point).

(B) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization provided the Application is submitted in the Nonprofit Set-Aside. The Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50%, and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(i) The Qualified Nonprofit Organization must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the Qualified Nonprofit Organization is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (2 points).

(iii) The Qualified Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (1 point).

(C) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of IRC §42(h)(5)(C) on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant. (2 points)

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the Compliance Period. Nonprofit organizations that formally operate under a parent organization may assign Control of the Development to that parent organization, so long as it meets the requirements of IRC §42(h)(5)(C).

(ii) The nonprofit organization, or individuals with Control of the nonprofit organization, must provide verifiable documentation of at least 10 years' experience in the continuous operation of a Development that provides services similar to those in the proposed Development.

(iii) The Applicant will provide a minimum of 3 additional points under §11.101(7) of this chapter (related to Resident Supportive Services), in addition to points selected under subsection (c)(3) of this section.

(3) Quantity of Low-Income Units. An Application may qualify for up to three (3) points under subparagraphs (A) or (B) of this paragraph. All calculations of averages shall be based solely on the July meeting of the Governing Board at which final awards of credits are authorized. Subsequent awards or withdrawals and supplemental credit allocations shall not be considered when calculating averages under this item. The only awards that will be included in the calculation of averages are 9% competitive tax credits, inclusive of any forward commitments made at the July meeting, and the average will only calculate housing tax credit units. If points are to be claimed under this item, Low-Income Units shall not be reduced after an award of tax credits. The Department shall publish relevant averages pertaining to this scoring item in the Site Demographics and Characteristics Report, and those figures shall be authoritative. These points are not available in the USDA or At-Risk Set-Asides, and Applications that were awarded in those Set-Asides will not be included in when calculating averages for this item.

(A) The Development is Urban and the Application proposes a number of Low-Income Units that is greater than the subregion average of the two prior competitive rounds.

(i) The proposed number of Low-Income Units is 10% greater than the subregion average of the two prior competitive rounds (1 point);

(ii) The proposed number of Low-Income Units is 20% greater than the subregion average of the two prior competitive rounds. (2 points);

(iii) The Application is proposing Rehabilitation of a Development that has no existing rent and income restrictions and does not receive any subsidy listed under §11.5(3)(B)(i). The proposed number of Low-Income Units is 50% greater than the subregion average of the two prior competitive rounds (3 points).

(B) The Development is rural and the Application proposes a number of Low-Income Units that is larger than the average of all rural awards in the two prior competitive rounds.

(i) The proposed number of Low-Income Units is 10% greater than the average of all Rural awards in the two prior competitive rounds (1 point);

(ii) The Development size is 80 units and entirely Low-Income or the proposed number of Low-Income Units is 20% greater than the average of all rural New Construction awards in the two prior competitive rounds (2 points).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42 (m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 30% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 20% of all Low-Income Units at 50 %or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs

that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

(iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

(iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. If selecting points from paragraph (1)(A) or paragraph (1)(B) of this subsection, these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from paragraph (1)(C) or paragraph (1)(D) of this subsection, these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation. Scoring options include:

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Supportive Services. (§2306.6710(b)(3) and (1)(G), and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of resident supportive services, which are listed in §11.101(b)(7) of this chapter (relating to Development Requirements and Restrictions) and meet the requirements of that section. (10 points).

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point).

(4) Residents with Special Housing Needs. (§2306.6710(b)(4); §42(m)(1)(C)(v)) An Application may qualify to receive up to four (4) points by serving Residents with Special Housing Needs by selecting points under any combination of subparagraphs (A), (B), and (C), of this paragraph. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program.

(A) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(B) If the Development has committed units under subparagraph (A) of this paragraph, the Development must commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness. Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum twelve-month period in Urban subregions, and an initial six-month period in Rural subregions, during which Units must either be occupied by Persons referred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month or six-month period, the Development Owner will no longer be required to hold Units vacant but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers local to the Development Site on the availability of Units at the Development Site. A Development is not eligible under this paragraph unless points have also been selected under subparagraph (A) of this paragraph. (1 point)

(C) If the Development is Supportive Housing and has a proposed occupancy preference or limitation for Veterans or a subgroup of only Veterans that is required or allowed by other federal or state financingby the Full Application Delivery Date. These points are only available to Developments that are proposed to be located on sites owned by the United States Department of Veterans Affairs (1 point).

(5) Opportunity Index. (42(m)(1)(C)(i)) The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. Based on the American Community Survey (ACS) data, a Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) of this paragraph.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and meets the requirements in clause (i),(ii), or (iii) of this subparagraph:

(i) The Development Site is located entirely within a census tract that has:

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region whichever is greater; and

(II) a median household income in the two highest quartiles among Census tracts within the uniform service region (2 points); or

(ii) The Development Site is located entirely within a census tract that has:

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater, and

(II) a median household income in the third quartile among Census tracts within the region, and

(III) is contiguous to a census tract that is in the first or second quartile among tracts for median household income in the region, and has a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and the Development Site is no more than 2 miles from the boundary between the census tracts (1 point); or

(iii) The Development Site is located in a Rural Area and:

(I) is located entirely located within a Census tract that has a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater, and

(II) is located in a Place which experienced an increase in population since the 2010 Decennial Census according to the Site Demographics Characteristics Report; (1 point).

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the factors in clause (i) or (ii) of this subparagraph. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development.

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set- Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XVI) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point).

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected:

(-a-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday) (1 point); or

(-b-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week (2 points).

(III) The Development Site is located within 2 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (2 point).

(IV) The Development Site is located within 2 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (2 point).

(V) The Development Site is located within 4 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point).

(VI) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The Development Site is located within 2 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within 6 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required

distance; online-only institutions do not qualify under this item. (1 point)

(X) Development Site is located in a census tract where 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 2 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within 2 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XIII) Development Site is within 2 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(XVI) If at Application, the Development is located in a county with a population of 1.2 million or more, but less than 4 million, and is located not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center, (which include all providers listed under the Veteran's Health Administration categories, excluding Benefits Administration offices, listed at this link https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=ALL), and has federal or state financing that requires or allows preference for leasing units in the Development to low income veterans, and agrees to provide that preference. (1 point).

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set- aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XIV) of this clause.

(I) The Development Site is located within 5 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (2 point).

(II) The Development Site is located within 5 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (2 point).

(III) The Development Site is located within 5 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point).

(IV) The Development Site is located within 5 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point).

(V) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point).

(VI) The Development Site is located within 5 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point).

(VII) The Development Site is located within 5 miles of a public park with a playground. (1 point).

(VIII) The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point).

(IX) Development Site is located in a census tract where 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the American Community Survey 5-year Estimate. (1 point).

(X) Development Site is within 4 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point).

(XI) Development Site is within 4 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XII) Development Site is within 4 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(6) Underserved Area. (§§2306.6725(a)(4) and (b)(2); 2306.127(3), 42(m)(1)(C)(i) and (ii)). Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph (5) of this subsection, then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory of the Site Demographic Characteristics Report from the current year. The specific month and date of the award are disregarded for this analysis. The Application must include evidence that the Development Site meets the requirements. An Application may qualify to receive up to five (5) points if the Development Site meets any one of the criteria described in subparagraphs (A) - (G) of this paragraph:

(A) (§2306.127(3)). The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border (5 points);

(B) (§2306.127(3)). The Development Site is located entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) (§2306.6725(b)(2)). The Development Site is located entirely within a census tract that does not have another Development that was awarded 30 or fewer years ago that serves the same Target Population as the proposed Development. Applications proposing Rehabilitation shall not consider the Development's prior allocation(s) as another development for the purposes of this scoring item (4 points);

(D) For areas not scoring points for subparagraph (C), the Development Site is located entirely within a census tract that does not have another Development that was awarded 15 or fewer years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (3 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was awarded 10 or fewer years ago according to the Department's property inventory in the Site Demographic Characteristics Report (2 points);

(F) The Development Site is located within a census tract and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded 10 or fewer years ago that serves the same Target Population as the proposed Development. Applications proposing Rehabilitation shall not consider the Development's prior allocation(s) as another development for the purposes of this scoring item. This item will apply to Development Sites located entirely in a Place, or its ETJ, with a population of 50,000 or more for Urban subregions and 10,000 or more for Rural subregions, and will not apply in the At-Risk or USDA Set-Asides; (5 points)

(i) The Development Site may intersect the boundaries of multiple Places so long as each has a population of at least 50,000 for Urban subregions, and 10,000 for Rural subregions.

(ii) Contiguous census tracts include those that touch at a point.

(G) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(7) Proximity to Job Areas. (§42(m)(1)(C)(i)) An Application may qualify to receive up to four (4) points if the Development Site is located in one of the areas described in subparagraphs (A), (B), or (C) of this paragraph, and the Application contains evidence substantiating qualification for the points. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. This determination will be based on the latest data set posted to the US Census website on or before August 1, 2023. The Development will use OnTheMap's function to import GPS coordinates that clearly fall within the Development Site, and the OnTheMap chart/map report submitted in the Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(A) Proximity to Jobs. For Development Sites in Urban subregions a Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (iv) of this subparagraph.

(i) The Development is located within 2 miles of 10,000 jobs. (4 points)

(ii) The Development is located within 2 miles of 8,000 jobs. (3 points)

(iii) The Development is located within 2 miles of 6,500 jobs. (2 points)

(iv) The Development is located within 2 miles of 4,500 jobs. (1 points)

(B) Proximity to Jobs. For Development Sites in Rural subregions a Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (iv) of this subparagraph.

(i) The Development is located within 4 miles of 8,000 jobs. (4 points)

(ii) The Development is located within 4 miles of 6,000 jobs. (3 points)

(iii) The Development is located within 4 miles of 4,000 jobs. (2 points)

(iv) The Development is located within 4 miles of 2,000 jobs. (1 points)

(C) Access to Jobs. A Development site which qualifies for at least 2 points under subparagraph (A) or (B) may qualify for up to 2 additional points under this subparagraph if the Development Site is within one half-mile from the entrance of a public transportation stop or station with a route schedule that provides regularly scheduled service to employment and basic services. (2 points)

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s)

must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive points from either:

(i) Seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) Fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph.

(i) Eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development.

(ii) Seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(iii) Eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development.

(iv) Seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, the Application will receive points from either:

(i) Seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) Fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals $500 or more for Applications located in Urban subregions or $250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H); §42(m)(1)(C)(i)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex. Gov't Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site. In addition, the Neighborhood Organization must be on record 30 days prior to the beginning of the Application Acceptance period with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph:

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood

Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in only one of the clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) Nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged.

(ii) Eight (8) points for explicitly stated support from a Neighborhood Organization.

(iii) Six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged.

(iv) Four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection.

(v) Four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section.

(vi) Zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2023. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(f) and (g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead or submitted in such a manner as to verify the sender, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). Letters received by the Department from State Representatives will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under paragraph (1) of this subsection (relating to Local Government Support). If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. For an Application with a

proposed Development Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive:

(I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph, and under subclause (IV) or (V) or (VI) of this subparagraph.

(I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development.

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development.

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in subparagraph B(4)(C)(iv) or (v) of this subsection), then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. (§42(m)(1)(B)(ii)(III) and (C)(iii)). An Application may qualify for up to seven (7) points un-

der this paragraph only if no points are elected under subsection (c)(5) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.

(ii) A plan may consist of one or two complementary local planning documents that together have been approved by the municipality as a plan to revitalize the specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, including a consolidated plan or one-year action plan required to receive HUD funds does not equate to a concerted revitalization plan. However, a comprehensive plan may include plans for specific areas targeted for revitalization that would qualify so long as that plan meets all requirements of this section.

(iii) The proposed Development must be entirely located within the targeted revitalization area.(iv) The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) and (II) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been published by the municipality or county in which the Development Site is located.

(II) The plan must be current at the time of Application. (v) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded as follows:

(-a-) the proposed Development Site is located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(-b-) the proposed Development Site is not located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(-c-) the proposed Development Site does not have a letter described in items (-a-) and (-b-) of this subclause (5 points).

(B) For Developments located in a Rural Area, the Rehabilitation or demolition and Reconstruction of a Development that has been leased and occupied at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Neighborhood Risk Factors. (7 points)

(e) Criteria promoting the efficient use of limited resources and Applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted, unless allowable exceptions provided for in §11.302(i)(5) are applicable. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. Applications that are proposed to have no Third Party permanent lender must still submit a 15-year pro forma; however, the signature and approval letters are not required. Scoring will be awarded as follows:

(A) If the letter evidences review of the Development alone it will receive twenty-four (24) points; or

(B) If the letter is from the Third Party permanent lender and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(C) If the Development is Supportive Housing and meets the requirements of §11.1(d)(125)(E)(i) of this chapter, it will receive twenty-six (26) points; or

(D) If the Development is part of the USDA set-aside and meets the requirements of §11.5(2) of this chapter and the letter is from the Third Party construction lender, and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(E) Applications that are proposed to have no Third Party permanent lender will receive twenty-six (26) points; or

(F) If the Department is the only permanent lender, and the Application includes the evaluation of the Request for Preliminary Determination submitted under §11.8(d) of this chapter, it will receive twenty-six (26) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned. The Department will annually compare the proportional cost increases from October of the prior year to October of the year being calculated based on the Construction Price Index for Multifamily Housing Units Under Construction (US Census Bureau) and increase the square foot cost targets in this item by that annual proportional amount of increase.

(A) Applications proposing New Construction or Reconstruction or Adaptive Reuse will be eligible for twelve (12) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost per square foot is less than or equal to $144.72 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $193.32 per square foot.

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost per square foot is less than or equal to $154.44 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $203.04 per square foot.

(C) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to $193.32 per square foot; or

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to $250.56 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(5)(A) and (B) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to $250.56 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (K) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self-score form) does not vary by more than four (4) points from what was reflected in the pre-application self-score;

(F) If points are claimed related to Underserved Area and/or Proximity to Jobs, the point elections may not change from what was reflected in the pre-application self-score and the supporting documentation for these points must be substantially similar to what was submitted with the Pre-Application;

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number or numbers listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application

(H) The distance used to determine the Tie-Breaker established in 10 TAC §11.7(2) remains the same or does not decrease between pre-application and full Application. If closer features to the Development Site are identified that could potentially result in a lower distance used for the Tie-Breaker, Applicants may elect to continue using the higher distance submitted with the Pre-Application in order to not be disqualified from pre-application points;

(I) For Applications funded through the USDA Set-Aside; year of initial construction as a residential Development remains the same or is not earlier;

(J) If a high quality Pre-Kindergarten is to be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application.

(K) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) if the Housing Tax Credit funding request is less than 9% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50% of the Developer Fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5) and (7); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6); §42(m)(1)(C)(x)).

(A) An Application may qualify to receive five (5) points if;

(i) For Developments with under 100 total Units at least 55% of the residential Units shall be constructed fully or partially within the Certified Historic Structure.

(ii) For Developments with 100 total Units or more, at least 55 of the residential Units shall be constructed fully or partially within the Certified Historic Structure.

(B) To qualify for points, the Development must receive historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)). An Application may receive points under subparagraphs (A) or (B) of this paragraph.

(A) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(B) The Development at the time of LURA execution is single family detached homes on separate lots or is organized as condominiums under Chapter 81 or 82 of the Texas Property Code and commits to offer a right of first refusal to tenants of the property to purchase the dwelling at a selected term but no earlier than the end of the Compliance Period and no later than the Extended Use Period. A de minimis amount of a participating tenant's rent may be attributed to the purchase of a Unit. Such commitment will be reflected in the LURA for the Development. The Applicant must provide a description of how they will implement the 'rent-to-own' activity, how they will make tenants aware of the opportunity, and how they will implement the right at the end of the selected term. If a Development is layered with National Housing Trust Funds, HOME-ARP, or another MFDL source where homeownership is not an eligible activity, the right of first refusal may not be earlier than the end of the Federal Affordability Period. §42(m)(1)(C)(viii). (1 point)

(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the regional allocation formula on or before December 1, 2023. (1 point)

(9) Readiness to Proceed. The Application includes a certification that site acquisition and building construction permit submission will occur on or before the last day of March of the following year or as otherwise permitted under subparagraph (C) of this paragraph. These points are not available in the At-Risk or USDA Set-Asides. (1 point)

(A) Applications must include an acknowledgement from all lenders and the syndicator of the required closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to acquire the site and submit construction permits by the March deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

(C) Applications that remain on the waiting list after awards are made in late July that ultimately receive an award will receive an extension of the March deadline equivalent to the period of time between the late July meeting and the date that the Commitment Notice for the Application is issued.

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than 14 days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1) of this subsection. (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraph (1), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the federal commitment or expenditure requirements, deadlines to enter into a Contract or close a Direct Loan, or did not meet benchmarks of their Contract with the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under subsection (c)(9) of this section (related to Readiness to Proceed).

(4) If the Developer or Principal of the Applicant has violated or violates the Adherence to Obligations.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

(a) The purpose of the Third Party Request for Administrative Deficiency (RFAD) process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. While an Administrative Deficiency may be issued as the result of an RFAD, not all RFADs will result in an Administrative Deficiency being issued.

(b) Staff will consider each RFAD received and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the award recommendation methodology as outlined in §11.6(3) of this chapter (related to Competitive HTC Allocation Process), not reviewing the matter further.

(c) If the assertion(s) in the RFAD describe matters that are part of the Application review process, and the RFAD does not contain information not present in the Application, staff will not review or act on it.

(d) The RFAD and any testimony presented to the Board regarding the result of an RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded.

(e) Requestors must provide, at the time of filing the request all information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. An RFAD that expresses the requestor's opinion will not be considered.

(f) Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification.

(g) The results of a RFAD may not be appealed by the requestor, and testimony to the Board arguing staff's determination will not be considered unless the requestor can show that staff failed to follow the applicable rule.

(h) A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process.

(i) Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice.

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

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

TRD-202304655

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 22, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

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

Except as described herein the adopted new section affects no other code, article, or statute.

§11.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME, HOME-ARP, or NSP PI funds from the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department. All Developments located within a 100 year floodplain must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features.

(A) An Undesirable Site Feature will render an Application ineligible unless acceptable mitigation as determined by staff or

the Board is undertaken. For Competitive HTC Applications, if staff identifies an undesirable site feature reflected in clause (i) - (x) of subparagraph (E) and it was not disclosed, the Application shall be terminated by staff. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under clause (xi) of subparagraph (E), staff may issue an Administrative Deficiency. In the event that staff cannot reasonably conclude whether a feature is considered undesirable, it may defer to the Board for decision.

(B) Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) and Developments encumbered by a TDHCA LURA the earlier of the first day of the Application Acceptance Period for HTC, Application Acceptance Date for Direct Loan, or date the pre-application is submitted (if applicable) may be granted an exemption by staff; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability) may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application.

(C) Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Undesirable Site Features become available while the Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in an Administrative Deficiency or re-evaluation.

(D) If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.

(E) The Undesirable Site Features include those described in clauses (i) - (xi) of this subparagraph. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance.

(i) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(ii) Development Sites located within 300 feet of an active solid waste facility, sanitary landfill facility, waste transfer station, or illegal dumping sites (as such dumping sites are identified by the local municipality);

(iii) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(iv) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(I) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(II) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(III) the railroad in question is commuter or light rail;

(v) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or that maintain fuel storage facilities, to the extent that these qualifying items are consistent with the general characteristics of heavy industry. Gas stations and other similar facilities that are not consistent with the characteristics of heavy industry are not considered an undesirable site feature;

(vi) Development Sites located within 10 miles of a nuclear plant;

(vii) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(viii) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(ix) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily;

(x) Development Sites that are located in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation, except that if the Development Site is located in a Noise Contour between 65 and 70 decibels, the Development Site will not be considered to have an Undesirable Site Feature if the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(xi) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be

deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) A Neighborhood Risk Factor will render an application ineligible unless acceptable mitigation as determined by staff or the board is undertaken. If the Development Site has any of the characteristics described in subparagraph (D) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, should staff determine that the Development Site has any of the characteristics described in subparagraph (D) of this paragraph and such characteristics were not disclosed, the Application shall be terminated by staff.

(B) Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraph (E) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and staff may issue an Administrative Deficiency.

(C) The presence of any characteristics listed in subparagraph (D) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit. Mitigation to be considered by staff is identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(D) The Neighborhood Risk Factors include those noted in clauses (i) - (iii) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraph (E) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13). Rehabilitation Developments are exempt from this Neighborhood Risk Factor.

(ii) The Development Site is New Construction or Reconstruction and is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Rehabilitation developments are exempt from this Neighborhood Risk Factor.

(iii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that had a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022.

(I) In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site.

(II) School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating.

(III) If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. Sixth grade centers will be considered as part of the middle school rating.

(IV) Elderly Developments, Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units, and Applications in the USDA Set-Aside for Rehabilitation of existing properties are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating information in the Application.

(E) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and should include the measures described in clauses (i) - (iii) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting.

(i) Mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. If the Development is located in the ETJ, the resolution would need to come from the county.

(ii) Evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence

may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. The data must include incidents reported during the entire calendar year previous to the year of Application. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates.

(iii) Evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022 must meet the requirements of subclauses (I) and (II) of this clause which will be a requirement of the LURA for the duration of the Affordability Period and cannot be used to count for purposes of meeting the threshold requirements under subparagraph (7)(B)(ii) of this paragraph.

(I) Documentation from a person authorized to speak on behalf of the school district with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation should include actual data from progress already made under such plan(s) to date demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter may, to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long- term trends that would point toward their achieving an A, B, or C Rating by the time the Development is placed in service. The letter from such education professional could also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful.

(II) The Applicant has committed that it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided to elementary, middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

(F) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (E) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions.

(ii) Determination that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.

(iii) No mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(4) Site and Neighborhood Standards (Direct Loan and HOME-ARP only). A New Construction Development, as defined by the applicable federal fund source, requesting federal funds must meet the Site and Neighborhood Standards in 24 CFR §983.57(e)(2) or (3). A Development requesting NHTF funds that meets the federal definition of reconstruction in 24 CFR §93.2 must also meet these standards.

(b) Development Requirements and Restrictions. The purpose of this subsection is to identify specific restrictions on a proposed Development requesting multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General Ineligibility Criteria include:

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

(ii) any Development with any building(s) with four or more stories that does not include an elevator. Developments where topography or other characteristics of the Site require basement splits such that a tenant will not have to walk more than two stories to fully utilize their Unit and all Development amenities, will not require an elevator;

(iii) a Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) a Development that proposes population limitations that violate §1.15 of this title (relating to Integrated Housing Rule);

(v) a Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto;

(vi) a Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision; or

(vii) any New Construction or Reconstruction proposing more than 30% efficiency and/or one-Bedroom Units. This requirement will not apply to Elderly or Supportive Housing Developments. For Historic Developments, this requirement will not apply to any units constructed within the Historic structure. For any New Construction or Reconstruction undertaken as part of a Historic Application, those newly constructed or reconstructed Units must meet this standard. The Units that are part of the Historic structure will not be included in the total when determining if the Application meets this requirement.

(B) Ineligibility of Elderly Developments include:

(i) any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) any Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, or security officer. These employee Units must be specifically designated as such; or

(iii) any New Construction, Reconstruction, or Adaptive Reuse Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Due to uncertainty linked to the delayed release of TEA Accountability ratings, this item is suspended. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for 2023 and a rating of "Not Rated: Senate Bill 1365" for 2022 is ineligible with no opportunity for mitigation. Developments that are encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(D) Ineligibility of Developments within Areas of High Crime. Any Development involving New Construction or Adaptive Reuse located in an area described in (a)(3)(D)(ii) of this subsection and for which mitigation submitted under subparagraph (D)(ii) of this paragraph still yields a Part I violent crime rate greater than 18 per 1,000 persons (annually) is ineligible with no opportunity for mitigation. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter (related to Feasibility Conclusion). Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work.

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the Rehabilitation will involve at least $20,000 per Unit in Building Costs and Site Work. If such Developments are greater than or equal to 20 years old, based on the placed in service date, the Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.

(C) For all other Developments, the Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (O) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (L), (N), and (O) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (H) or (N) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission or National Park Service, as applicable. Applicants for Multifamily Direct Loans should be aware that certain amenities are not eligible for Direct Loan funding, including without limitation, detached community spaces, furnishings, swimming pools, athletic courts, and playgrounds, as more fully described at §13.3 of this title (relating to General Loan Requirements). Amenities include:

(A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal (not required for USDA Rehabilitation);

(F) Energy-Star or equivalently rated dishwasher; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit;

(G) Energy-Star or equivalently rated refrigerator;

(H) Oven/Range;

(I) Blinds or window coverings for all windows;

(J) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(K) Energy-Star or equivalently rated lighting in all Units;

(L) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half spaces per Unit for non-Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout the Affordability Period. If a waiver or variance of local code parking requirements has been requested then evidence to that effect must be included in the Application;

(N) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); and

(O) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph:

(i) Developments with 16 to 40 Units must qualify for two (2) points;

(ii) Developments with 41 to 76 Units must qualify for four (4) points;

(iii) Developments with 77 to 99 Units must qualify for seven (7) points;

(iv) Developments with 100 to 149 Units must qualify for ten (10) points;

(v) Developments with 150 to 199 Units must qualify for fourteen (14) points; or

(vi) Developments with 200 or more Units must qualify for eighteen (18) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. A Development composed of non-contiguous single family sites must provide a combination of unit and common amenities to equal the appropriate points under subparagraph (A) of this paragraph for the Development size. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site, regardless of resident access to the amenity in another phase. All amenities must be available to all Units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Community Space for Resident Supportive Services includes:

(I) Except in Applications where more than 10% of the Units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under §11.101(b)(5)(A)(i) - (vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider Agreement. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) of this item, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement for Competitive HTC Applications.

(-1-) The agreement must be between the Owner and an Educational Provider.

(-2-) The agreement must reflect that at the Development Site the Educational Provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an Educational Provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points).

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points).

(IV) Service provider office in addition to leasing offices (1 point).

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point).

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point).

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points).

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point).

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

(iii) Health/Fitness/Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point).

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point).

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (V) of this clause is not selected.

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (IV) of this clause is not selected.

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point).

(VII) Swimming pool (5 points).

(VIII) Splash pad/water feature play area (3 points).

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, Soccer, or Baseball Field) (2 points).

(iv) Design / Landscaping amenities include:

(I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points).

(II) Enclosed community sun porch or covered community porch/patio (1 point).

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (2 points).

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points).

(V) Porte-cochere (1 point).

(VI) Lighted pathways along all accessible routes (1 point).

(VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point).

(v) Community Resources amenities include:

(I) Community laundry room with at least one washer and dryer for every 40 Units (2 points).

(II) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills).

(III) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points).

(IV) Furnished Community room (2 points).

(V) Library with an accessible sitting area (separate from the community room) (1 point).

(VI) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).

(VII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).

(VIII) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points).

(IX) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse or community building (1 point).

(X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points).

(XI) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point).

(XII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points).

(XIII) Recycling Service (includes providing a storage location and service for pick-up) (1 point).

(XIV) Community car vacuum station (1 point).

(XV) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 Units (1 point).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements. The requirements are:

(i) four hundred fifty (450) square feet for an Efficiency Unit;

(ii) five hundred fifty (550) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of five (5) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph.

(i) Unit Features include:

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);

(XI) 48-inch upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one bathroom (0.5 point); and

(XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features include:

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) Thirty year roof (0.5 point);

(III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);

(IV) Electric Vehicle Charging Station (0.5 points);

(V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, (1 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points);

(IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points);

(X) Wi-Fi enabled, Energy-Star or equivalently rated "smart" thermostats installed in all units (1 point); and

(XI) Solar panels installed, with a sufficient number of panels to reach a rated power output of at least 300 watts for each Low-Income Unit. (2 points).

(7) Resident Supportive Services. The resident supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) - (E) of this paragraph, the Development Owner may request an Amendment as provided in §10.405(a)(2) of this chapter (relating to Amendments and Extensions). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents

for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Unless otherwise specified, services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services include:

(i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point).

(B) Children Supportive Services include:

(i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of paragraph (5)(C)(i)(I) of this subsection. (Half of the points required under this paragraph); and

(ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

(C) Adult Supportive Services include:

(i) Four hours of weekly, organized, in-person, hybrid, or virtual classes accessible to participants from a common area on site to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, homebuyer counseling, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(v) reporting rent payments to credit bureaus for any resident who affirmatively elects to participate, which will be a requirement of the LURA for the duration of the Affordability Period (2 points); and

(vi) participating in a non-profit healthcare job training and placement service that includes case management support and other need-based wraparound services to reduce barriers to employment and support Texas healthcare institution workforce needs (2 points).

(D) Health Supportive Services include:

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

(E) Community Supportive Services include:

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points); and

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730).

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph. Visitability requirements include:

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units; and

(iii) Each affected unit must include the features in subclauses (I) - (V) of this clause:

(I) At least one zero-step, accessible entrance;

(II) At least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(III) The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(IV) There must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, assuming all the Units have similar features only the number of Bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used. However, a single story Unit may be substituted for a townhome Unit, if the single story Unit contains the same number of Bedrooms and bathrooms and has an equal or greater square footage.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

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

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Bobby Wilkinson
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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§11.201. Procedural Requirements for Application Submission.

This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability).

Applicants are subject to the schedule of fees as set forth in §11.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be 5:00 p.m. on the third business day following the date of the deficiency notice and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. The PDF copy and Excel copy of the Application must match, if variations exist between the two copies, an Administrative Deficiency will be issued for the Applicant to identify which document to rely on. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. If an Applicant can view the files that were uploaded, then that shall serve as an indication that the Application was uploaded and received by the Department. Staff, may, as a courtesy, confirm that the Application files were uploaded, but shall not be obligated or required to confirm such submission. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place at the time the Application is received by the Department, unless determined otherwise by staff. Regardless of the timing associated with notification by the TBRB that an application is next in line to receive a Certificate of Reservation and the corresponding deadline to submit the Application pursuant to 34 TAC §190.3(b)(13), it is the Department's expectation that the requirements in this chapter are adhered to, and that care and attention are given to the compilation of the Application, or the Application may be terminated. Applications that intend to request other Department funding (e.g. Multifamily Direct Loan, HOME-ARP, etc) will require a minimum 120-day review period by staff before targeting a Board meeting date for consideration. If, at the time of Application submission, other Department funding is over-subscribed, the submitted Application cannot include a request for such funds.

(A) Lottery Applications. At the option of the bond issuer, an Applicant may participate in the TBRB lottery for private activity bond volume cap. Applicants should refer to the TBRB website or discuss with their issuer or TBRB staff, the deadlines regarding lottery participation and the timing for the issuance of the Certificate of Reservation based on lottery results. Depending on the Priority designation of the application filed with TBRB, the Application submission requirements to the Department under clauses (i) - (iii) of this subparagraph must be met. For those that participate in the Lottery but are not successful (i.e. a Certificate of Reservation will not be issued in January, but at some other time), the Application may not be submitted until a Certificate of Reservation has been issued (i.e. Priority 3 applications) or TBRB has sent an email stating the application is next in line (i.e. Priority 0, Priority 1 or Priority 2), but the Certificate of Reservation cannot be issued until the Application is submitted.

(i) Priority 0 applications for supplemental bond allocations: If an Applicant is seeking additional private activity bond volume cap pursuant to H.B. 1766 for purposes of meeting the 50% Test, upon notice from the TBRB that the Application is next in line to receive a Certificate of Reservation, a complete Application will not be required to be submitted and staff will notify TBRB accordingly. However, if there are changes to the Development that are different from what the Department originally approved that would constitute an amendment under §10.405 of this chapter (relating to Amendments and Extensions) a request for an Amendment must be submitted to the Department. Staff will not re-issue the Determination Notice associated with supplemental bond allocations.

(ii) Priority 1 or 2 applications: If the Certificate of Reservation will be issued in January, the Applicant may submit the complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter, within the timeframe allowed under the TBRB notice. Alternatively, upon notification from TBRB that an Applicant is next in line to receive a Reservation the Applicant may choose to only submit the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. In this case, the Application will not be scheduled for a Board meeting or target date for the issuance of the Determination Notice, as applicable, until such time the Third Party Reports have been submitted, which should be on the fifth of the month. The Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the issuance of the Determination Notice, as applicable, approximately 90 days following the submission of such Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. For Third Party Reports that are submit-

ted after the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the issuance of the Determination Notice, as applicable. The Application must be submitted using the Uniform Application released by the Department for the upcoming program year.

(iii) Priority 3 applications: Once the Certificate of Reservation has been issued, the same Application submission requirements as indicated in clause (ii) of this subparagraph apply. Specifically, an Applicant may submit the Application including or excluding the Third Party Reports, however, only after the Application is considered complete (i.e. Application Fee and all Third Party Reports) will staff schedule the Application for a Board meeting or target date for the issuance of the Determination Notice. The timing of when a Priority 3 Application is submitted to the Department is up to the Applicant and if not submitted on the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the administrative issuance of the Determination Notice, as applicable.

(B) Non-Lottery Applications or Applications Not Successful in Lottery.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, before the Certificate of Reservation can be issued by the TBRB. The Third Party Reports, if not submitted with the Application to meet the TBRB submission requirement, must then be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the administrative issuance of the Determination Notice, as applicable, approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. If the Third Party Reports are submitted on a date other than the fifth of the month, it will be at staff's discretion as to which Board meeting the Application will be presented, or what will be the target date for the administrative issuance of the Determination Notice, as applicable. Applicants may not submit the Application until staff receives notice from TBRB that the application is next in line to receive a Certificate of Reservation; or

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date or administrative issuance of the Determination Notice, as applicable.

(C) Generally, the Department will require at least 90 days to review an Application unless staff can complete its evaluation in sufficient time for earlier consideration. If the Application is layered with other Department funds the Department will require at least 120 days to complete its evaluation. An Applicant should expect this timeline to apply regardless of whether the Board will need to approve the issuance of the Determination Notice or it is determined that staff can issue the Determination Notice administratively for a particular Application. Applicants should be aware that unusual financing structures, portfolio transactions, the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review. In instances where an Application necessitates more staff time to review than normal, where an Application is suspended due to the inability to resolve Administrative Deficiencies by the original deadline, or an extension to respond to an Administrative Deficiency is requested, staff is not obligated to ensure the Application meets the original target date for a Board Meeting or administrative issuance of a Determination Notice, as applicable. Moreover, such review period may be longer depending on the volume of Applications under review and statutory program timing constraints associated with such Applications. The prioritization of Applications will be subject to the review priority established in paragraph (5) of this section.

(D) Withdrawal of Certificate of Reservation. Applications under review by the Department that have the Certificate of Reservation withdrawn and for which a new Certificate of Reservation is not expected to be issued within a reasonable amount of time, as determined by staff, the Department will consider the Application withdrawn and the Applicant will be provided notice to that effect. Once a new Certificate of Reservation is issued, it will be at the Department's discretion to determine whether the existing Application can still be utilized for purposes of review or if a new Application, including payment of another Application Fee, must be submitted. The Department will not prioritize the processing of the new Application over other Applications under review once a new Certificate of Reservation is issued, regardless of the stage of review the Application was in prior to the withdrawal of the Certificate of Reservation, or that it maintain the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable.

(E) Direct Loan Applications must be submitted in accordance with the requirements in this chapter, §13.5 (relating to the Application and Award Process), and the applicable Notice of Funding Availability (NOFA).

(3) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. To the extent a Direct Loan award is returned after Board approval, penalties may be imposed on the Applicant and Affiliates in accordance with §13.11(a) of this title (relating to Post Award Requirements).

(4) Competitive Evaluation Process. Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be conducted based upon the likelihood that an Application will be competitive for an award based upon the region, set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule) as applicable. The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). The reviews by the Multifamily Finance Division and the Real Estate Analysis Division will be conducted to meet the requirements of the Program or NOFA under which the Application was submitted. Applications will

undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). The Department may provide a scoring notice reflecting such score to the Applicant which will trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process). For an Application for which the selection criteria are reviewed, the scoring notice for the Application will be sent to the Applicant no later than 21 days prior to the final Board approval of awards.

(5) Order of review of Applications under various Programs. This paragraph identifies how ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review of Applications submitted under different programs.

(A) De-concentration. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) for Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application associated with the Traditional Carryforward Designation is submitted to the Department;

(ii) for all other Developments, the date the Application is considered received by the Department; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of reviews of Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed.

(6) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. The deficiency process does not require staff to request information from the Applicant in order to complete the Application. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files and must be uploaded to the Application's ServU http file. Emailed responses will not be accepted. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Department staff and Board.

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is an expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions, suspension, or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party, the documentation involves Third Party signatures needed on certifications in the Application, or an extension is requested as a reasonable accommodation. A Deficiency response may not contain documentation that did not exist prior to submission of the pre-application or Full Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. Points deducted for failure to timely respond to a deficiency will not impact the Pre-Application score. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to the Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficien-

cies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. If an Applicant appeals a staff termination to the Board, Board decisions on terminations are final and an Applicant will not be allowed to re-apply under the same Certificate of Reservation due to the limited timeframe allowed under the existing Reservation.

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application may be terminated and the Applicant will be provided notice to that effect. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved during the suspension period, the date by which the final deficient item is submitted shall be the new Application Acceptance Date pursuant to §13.5(c) of this title (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. Should an Applicant still desire to move forward with the Development after Termination, a completely new Application must be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application, which will have a new Application Acceptance Date.

(7) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (6) of this section, if deemed appropriate. A limited review is intended to address:

(A) Clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) Technical correction of non-material information that would cause an Application deemed non- competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(8) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§11.202. Ineligible Applicants and Applications.

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. The items listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in the U.S. government's System for Award Management (SAM); (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(C) Is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by FINRA; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation Review);

(G) Is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans, and for which no repayment plan has been approved by the Department;

(H) Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) Has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully Deobligated during the 12 months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment or Determination Notice, or Direct Loan Contract for a Development;

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;

(M) Fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) - (v) of this subparagraph as considerations:

(i) the amount of resources in a Development and the amount of the benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) A violation of Tex. Gov't Code §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (i.e. any contact other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed;

(B) The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code §2306.6703(a)(1);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

(iii) the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

§11.203. Public Notifications. (§2306.6705(9)).

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications generally must not be older than three months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct

Loan Applications, notifications generally must not be older than three months prior to the date the complete Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. Should the jurisdiction of the official holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application in a manner that results in the Development being within a new jurisdiction, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those in office at the time the Application is submitted; however, a mailed notification that is addressed to the entity or officeholder rather than a specific person is acceptable so long as it is mailed to the correct address and otherwise meets all requirements. Note that between the time of pre-application (if made) and full Application, the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification. Recipients include:

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (ix) of this subparagraph:

(i) the Applicant's name, address, individual contact name, and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);

(vi) the total number of Units proposed and total number of Low-Income Units proposed;

(vii) the residential density of the Development, i.e., the number of Units per acre;

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department; and

(ix) Information on any proposed property tax exemption.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(C) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§11.204. Required Documentation for Application Submission.

The purpose of this section is to identify the threshold documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for

residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title, relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations and will specifically market to the public housing authority (PHA) waitlists for any PHA in the city and/or county the Development is located within and the PHA of any City within 5 miles of the Development. The Development Owner will be required to identify how they will specifically market to veterans and the PHA waiting lists and report to the Department in the annual housing report on the results of the marketing efforts to veterans and PHA waiting lists. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department consideration for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter (relating to Public Notifications (§2306.6705(9)).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an Application with a Development Site that is:

(i) within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) within the ETJ of a municipality, the Applicant must submit both:

(I) A resolution from the Governing Body of that municipality; and

(II) A resolution from the Governing Body of the county; or

(iii) within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond Dates and Deadlines). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The representations regarding the Development made to the applicable Govern-

ing Body to obtain the resolution must remain accurate, as reflected in the submitted Application. If material aspects of the Development have changed from when the Governing Body adopted the resolution, it is incumbent upon the Applicant to obtain a new resolution in order to satisfy this requirement. No resolutions older than four years will be accepted. The resolution(s) must certify that:

(i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code §2306.67071(a);

(ii) the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code §2306.67071(b); and

(iv) after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board. The factors include:

(i) the population of the political subdivision or census designated place does not exceed 25,000;

(ii) the characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

(iv) the political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) the political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) the boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits. The income and corresponding rent restrictions that impact the Units also restricted by the Department will be reflected in the LURA. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) - (iv) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing.

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company must:

(I) be current, non-expired, and have been signed or otherwise acknowledged by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;

(IV) include either a committed and locked interest rate, or the estimated interest rate;

(V) include all required Guarantors, if known;

(VI) include the principal amount of the loan;

(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the

Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet; and

(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable;

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming the outstanding loan balance on a specified date and confirming that the Preliminary Assessment Tool has been submitted by the Applicant to USDA. The loan amount that is reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and that is used to determine the acquisition cost must be the Applicant's estimate of the projected outstanding loan balance at the time of closing as calculated on the USDA Principal Balance Amortization exhibit.

(iv) For Direct Loan Applications or Tax-Exempt Bond Developments with TDHCA as the issuer that utilize FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made to an available fund source. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

(v) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the financing plan for the Development, including as applicable the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the term sheets for all funding sources. For Applicants requesting Direct Loan funds and 9% LIHTC, Match, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds. The information provided must be consistent with all other documentation in the Application.

(7) Operating and Development Cost Documentation.

(A) Fifteen-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses (or longer, if required by the NOFA), in the form provided by the Department. Any "other" debt service included in the pro forma must include a description. For Tax-Exempt Bond Developments, the pro forma must be signed by the lender and syndicator.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must include a description. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must meet the requirements of clauses (i) - (vi) of this subparagraph. The income and corresponding rent restrictions will be reflected in the LURA for the duration of the Affordability Period and for Tax-Exempt Bond Developments, in accordance with the Applicant's election under Tex. Gov't Code §1372.0321. The requirements are:

(i) indicate the type of Unit restriction based on the Unit's rent and income restrictions;

(ii) reflect the rent and utility limits available at the time the Application is submitted;

(iii) reflect gross rents that cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements;

(iv) have a Unit mix and net rentable square footages that are consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds:

(I) Direct Loan-restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules or as specifically allowed in a NOFA;

(II) if HOME, TCAP RF, and/or NSP PI are the anticipated fund source, the Application must have at least 90% of the Direct Loan-restricted Units be available to households or families whose incomes do not exceed 60% of the Area Median Income;

(III) in which HOME or TCAP RF are the anticipated fund source have at least 20% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(IV) in which NHTF is the anticipated fund source, have 100% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed the greater of 30% of the Area Median Income or whose income is at or below the poverty line;

(V) in which NSP PI is the anticipated fund source, have at least 25% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(VI) in which HOME-ARP is the anticipated fund source, during the State Affordability Period have at least 20% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 60% of the Area Median Income and 100% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 80% of the Area Median Income; and

(vi) if proposing to elect income averaging, Units restricted by any fund source other than housing tax credits must be specifically identified, and all restricted Units, regardless of fund source, must be included in the average calculation.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph. For Applications that include a scope of work that contains a combination of new construction and rehabilitation activities, the Application must include a separate development cost schedule exhibit for only the costs attributed to the portion of rehabilitation activities.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer. If Site Work costs (excluding site amenities) exceed $20,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then an Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes and the source of their cost estimate. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under §13.11(b) of this title (relating to Multifamily Direct Loan Rule). If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non- applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period; or

(II) The two most recent consecutive annual operating statement summaries; or

(III) The most recent consecutive six months of operating statements and the most recent available annual operating summary; or

(IV) All monthly or annual operating summaries available; and

(ii) a rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and any vacant units;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure com-

pliance with the URA and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(8) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

(i) states the size of the site on its face;

(ii) includes a Unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;

(iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

(v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) clearly delineates the flood plain boundary lines or states there is no floodplain;

(vii) indicates placement of detention/retention pond(s) or states there are no detention ponds;

(viii) describes, if applicable, how flood mitigation or other required mitigation will be accomplished;

(ix) indicates the location and number of parking spaces, garages, and carports;

(x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

(xii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area.

(C) Unit floor plans for each Unit Type must be included in the Application and must include the square footage. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-Bedroom, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan.

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(9) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the 36 month period prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. To meet the requirements of subparagraph (B) of this paragraph, Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer, must certify in the Application that the Site Control submitted with the TBRB application for the Certificate of Reservation to be issued is still valid. Tax-Exempt Bond Developments involving Acquisition and Rehabilitation or identity of interest land acquisitions must submit Site Control documents in order to verify the site acquisition cost as required in §11.302 of this chapter.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department. Site Control items include:

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or

(ii) a contract or option for lease with a minimum term of 45 years that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date.

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter (relating to Underwriting Rules and Guidelines), then the documentation required as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the

property agrees that the LURA may extend to the access easement by the time of Commitment, Determination Notice or Contract (as applicable).

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated to remove a right of way or similar dedication, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment or Contract (as applicable).

(10) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters evidencing zoning status must be no more than 6 months old at Application submission, except where such evidence is for an area where there is no zoning and such letters must be updated annually by the political subdivision.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning. This requirement does not apply to a Development Site located entirely in the unincorporated area of a county, and not within the ETJ of a municipality.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) that it will allow the non-conformance;

(iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

(11) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted. Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer are exempt from this requirement.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(12) Ownership Structure and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the organizational structure of the proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. In the case of Housing Tax Credit Applications only in which private equity fund investors are passive investors in the sponsorship entity, the fund manager, managing member or authorized representative of the fund who has the ability to Control, should be identified on the organizational chart, and a full list of investors is not required. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(C) Previous Participation. Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (B) of this paragraph has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation Review). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information must authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) Direct Loan. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions

of Person, Affiliate, Principal, and Control found in 2 CFR Part 180 and 2424, when completing the organizational chart and the Previous Participation information.

(13) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided. For Tax-Exempt Bond Developments, if the bond issuer is the sole member of the General Partner, a copy of the executed inducement resolution will meet the resolution requirement in this paragraph.

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in clauses (i) to (v) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the Nonprofit Set-Aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph. Required documents include:

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) That the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member;

(V) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(VI) That the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under their respective chapters of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(14) Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph. Acquisition and Rehabilitation Applications are exempt from this requirement. If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development. Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, only subparagraph (D) of this paragraph is required to be submitted.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off- Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs, including but not limited to: Critical Water Quality Zones, habitat protection requirements, construction for environmental conditions (wind, hurricane, flood), and local design restrictions.

(C) The Report should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

(i) a summary of zoning requirements;

(ii) subdivision requirements;

(iii) property identification number(s) and millage rates for all taxing jurisdictions;

(iv) development ordinances;

(v) fire department requirements;

(vi) site ingress and egress requirements; and

(vii) building codes, and local design requirements impacting the Development.

(D) Survey as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys (excluding those for Rehabilitation Developments) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set- back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(F) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

(15) HOME Match Requirements. All Developments with HOME Match Eligible Units will be required to enter into a Contract and a Land Use Restriction Agreement with the Department.

(A) Tax-Exempt Bond Developments where the Department is the bond issuer, must meet criteria to be classified as HOME Match Eligible Units. Tax-Exempt Bond Developments through a Local Bond Issuer, that include a certification from the Participating Jurisdiction where the Development site(s) is located stating that the bond proceeds are being used as HOME Match funds for the Participating Jurisdiction(s) where the Development Site(s) is located will be exempt from having to provide HOME Match Eligible Units. This certification is not required if the Development site(s) are located outside a local Participating Jurisdiction, as the Bonds will be classified as HOME Match.

(B) For Direct Loan funded Developments, unless otherwise identified by the provisions in the NOFA or other funding document, TCAP RF and matching contributions on HOME, NSP, and NHTF Developments, must meet all criteria to be classified as HOME-Match Eligible Units. The amount of Match required will be published in the NOFA or other funding document.

§11.205. Required Third Party Reports.

The Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application may be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 12 months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six months prior to the date of Application submission, or Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) For Acquisition/Rehabilitation or Reconstruction projects that meet the following criteria, a comprehensive market study as outlined in IRS Section 42(m)(1)(A)(iii) shall mean a location map and a written statement by a disinterested Qualified Market Analyst certifying that the project meets these criteria:

(i) All of the Units in the project contain existing project based rental assistance that will continue for at least the Compliance Period, an existing Department LURA, or the subject rents are at or below 50% AMGI rents;

(ii) The Units are at least 80% occupied at time of Application; and

(iii) Existing tenants have a leasing preference or right to return to the Development as stated in a relocation plan.

(B) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §11.303 of this chapter.

(C) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))(D). It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original SCR. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website. For Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must include a Scope of Work Narrative as described in §11.306(j) of this chapter (relating to Scope and Cost Review Guidelines).

(4) Appraisal. This report prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter. The Appraisal must not be dated more than six months prior to the date of Application submission, the Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable. Notwithstanding the foregoing, if the Application contains a Market Analysis and the appraisal is not required to fulfill purposes other than establishing the value of land or buildings, an appraisal is not required if no acquisition costs are entered in the development cost schedule.

§11.206. Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv)).

The Board's decisions regarding awards or the issuance of Determination Notices, if applicable, shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the Housing Tax Credit or Direct Loan recommendation, or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207. Waiver of Rules.

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request to remedy an error in the QAP or other Multifamily rules, provide necessary relief in response to a natural disaster, or address facets of an Application or Development that have not been contemplated. The Applicant must submit plans for mitigation or alternative solutions with the waiver request. Any such request for waiver submitted by an Applicant must be specific to an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of the Applicant or is due to an overwhelming need. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph, unless the Applicant demonstrates that all potential options have been exhausted.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex.

Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any Forward Commitments, unless due to extenuating and unforeseen circumstances as determined by the Board. The Board may not waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending statutory or regulatory requirements.

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

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

TRD-202304657
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 22, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§11.301. General Provisions.

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Director and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions.

(1) Pursuant to Tex. Gov't Code §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notices 15-11 and 21-10 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(2) Oversourcing of Funds. The total amount of Department-allocated funds combined with any additional soft funds provided by other units of government may not exceed the total cost of all non-market Units at the development, calculated on a per-unit basis. For purposes of this subsection, soft funds include any grants, below-market interest rate loans, or similar funds with a total cost to the Applicant that is below commercial-rate financing, but does not include payable loans provided at commercial rates with deferred payments. If the Department determines that a Development is oversourced in accordance with this subsection, the Applicant will be required to reduce the soft funds provided by other units of government so as to no longer be oversourced.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in this chapter, Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the amounts determined using the methods in paragraphs (1) - (3) of this subsection:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in

the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 80% AMI.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase. Tenant-based vouchers or tenant-based rental assistance are not included as Income.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent- assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $30 per Unit per month range. Projected income from tenant-based rental assistance will not be considered. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). 100% project-based rental subsidy developments (not including employee-occupied units) may be underwritten at a combined 5% vacancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing De-

velopment or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. The Underwriter will use the Applicant's proposed Management Fee if it is within the range of 4% to 6% of EGI. A proposed fee outside of this range must be documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, such documentation may be required prior to Commitment or Determination Notice if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. If the term sheet has an expiration date, the term sheet must have been signed by the Applicant prior to the expiration date; or

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma; and

(iii) On-site staffing or pro ration of staffing for coordination of services only, and not the provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described in subparagraphs (A) - (K) of this paragraph (relating to Operating Feasibility). If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates of EGI, Total Operating Expenses, or NOI. The Applicant's NOI will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of the debt service payments on all permanent or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funding Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan documents do not exist, loan terms including principal and interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the minimum DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology for determining the variable rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Direct Loans will be fully amortized over the same period as the permanent lender debt.

(C) Repayment Period. For purposes of projecting the DCR over a 30 year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the priority order presented in subclauses (I) - (IV) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) A reduction to the interest rate of a Direct Loan;

(II) An increase in the amortization period of a Direct Loan;

(III) A reduction in the principal amount of a Direct Loan; and

(IV) An assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the priority order presented in subclauses (I) - (III) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) an increase to the interest rate of a Direct Loan up to the lesser of the maximum interest rate pursuant to a Direct Loan NOFA or the interest rate on any senior permanent debt or if no senior permanent debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period on a Direct Loan but not less than 30 years; and

(III) an assumed increase in the permanent loan amount for non-Department proposed financing based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) For Developments financed with a Direct Loan subordinate to FHA financing, the combined DCR will be calculated using 75% of the Surplus Cash after the senior debt service is deducted from Net Operating Income. The combined DCR must meet a minimum 1.0 DCR to demonstrate financial feasibility.

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the SCR estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost. For Competitive Housing Tax Credit Applications, the Underwriter will adjust an Applicant's cost schedule line item to meet program rules. Underwriter will not make subsequent adjustments to the application to meet feasibility requirements as a result of the initial adjustment required to meet program rules.

(1) Acquisition Costs.

(A) Land, Acquisition and Rehabilitation, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition with no building acquisition cost in basis or when the acquisition is not part of the Direct Loan eligible cost and not subject to the appraisal requirements in the Uniform Relocation Assistance and Act of 1970, the underwritten acquisition cost will be the amount(s) reflected in the Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement.

(ii) For an identity of interest acquisition or when required by the Uniform Relocation Assistance and Acquisition Act of 1970 the underwritten acquisition cost will be the lesser of the amount reflected in the Site Control documents for the property or the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). An appraisal is not required if the land or building are donated to the proposed Development, and no costs of acquisition appear on the Development Cost Schedule. An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, or a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property as of the first date of the Application Acceptance Period or the Application Acceptance Date for Direct Loans; or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period or in the case of a tax-exempt bond or 4% tax credit application the Application Date.

(iii) For all identity of interest acquisitions, the cost used at cost certification will be limited to the acquisition cost underwritten in the initial Underwriting of the Application.

(iv) In cases where more land will be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s) or the appraisal, if an appraisal is required. An appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage may be used by the Underwriter in making a proration determination based on relative value. The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the transfer value approved by USDA.

(C) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will utilize the land value from the appraisal and adjust the building acquisition cost accordingly.

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site amenities, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi- level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work, and building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement if adequately described and substantiated in the

SCR report as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. Any General Contractor fees above this limit will be excluded from Total Housing Development Costs. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less. If the Development is an additional phase, proposed by any Principal of the existing tax credit Development, the Developer Fee may not exceed 15%, regardless of the number of Units.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs. Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee. All costs for general and administrative expenses for the Developer, including, but not limited to, travel, dining, and courier fees will be considered part of the Developer Fee.

(C) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(D) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to 24 months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount presented in the Applicant's Development Cost Schedule up to twelve months of stabilized operating expenses plus debt service (up to twenty-four months for USDA or HUD-financed rehabilitation transactions). Reserve amounts exceeding these limits will be excluded from Total Housing Development Costs. Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally, the Applicant's costs are used; however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates for Building Cost or Soft Costs. The Applicant's Total Housing Development Cost and Total Eligible Cost will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of NSPIRE violations and other information available to the Underwriter;

(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the Development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan or Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(4) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended for approval if the DCR exceeds 1.50 any year during the longer of the term of the Direct Loan or the Federal Affordability Period, unless the Applicant elects to commit 25% of annual Cash Flow to a special reserve account, in accordance with §10.404(d) of this title, for any year the DCR is over 1.50. Annual Cash Flow will be calculated after deducting any payment due to the DevelopMuer on a deferred developer fee loan and any scheduled payments on cash flow loans. The Department will calculate the total special reserve amount based on the Cash Flow at Direct Loan Closing underwriting. The deposits into the special reserve account must be made annually from 25% of remaining annual cash flow until the total special reserve amount is reached. Alternatively, Applicant may request the Direct Loan interest rate be increased by Underwriter at Direct Loan Closing underwriting if financially feasibility is still met. If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan. This standard will also be used when the Development Owner is seeking approval for a request for a subordination agreement or a refinance, except the total special reserve amount will be based on the Cash Flow reflected in the underwriting at that time. A special reserve account is not eligible for Developments layered with FHA financing that is subject to HUD's Multifamily Accelerated Processing Guide.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) or (4) of this subsection, applies unless paragraph (5)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). The Underwriter will verify the conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad capture rate exceeds 10%; or

(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) Is in a Rural Area and targets the general population, and:

(i) contains Housing Tax Credit Units of 120 or less, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(ii) contains more than 120 Housing Tax Credit Units, and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%; and

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply:

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference; or

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(4) Long Term Feasibility. The Long Term Pro forma reflects:

(A) A Debt Coverage Ratio below 1.15 at any time during years two through fifteen; or

(B) Negative Cash Flow at any time throughout the term of a Direct Loan, or at any time during years two through fifteen for applications that do not include a request for a Direct Loan.

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3)(A) or (4) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan, including a Supportive Housing Development, will not be re-characterized as feasible with respect to paragraph (4)(B) of this subsection. The Development:

(i) will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50% of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application;

(ii) will receive rental assistance for at least 50% of the Units in association with USDA financing;

(iii) will be characterized as public housing as defined by HUD for at least 50% of the Units;

(iv) meets the requirements under §11.1(d)(124)(E)(i) of this chapter (relating to the Definition of Supportive Housing); or

(v) has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list. Submission items include:

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships);

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis;

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis;

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed;

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location, description of Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Development.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) How the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) What are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) If the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the lo-

cation of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area including:

(I) monthly rent and Utility Allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and

(xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph, if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support the overall demand conclusion for the proposed Development. State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports must include:

(i) All demographic reports must include population and household data for a five year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. For HOME-ARP, demand for Qualifying Populations must be identified in accordance with Section VI B.10.a.ii of CPD Notice 21-10. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Elderly Developments:

(-a-) minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) For Supportive Housing:

(-a-) minimum eligible income is $1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-a-) minimum eligible income for the assisted units is $1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) For External Demand, assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) For Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category. For HOME-ARP, Units for Qualified Populations will be underwritten at $0 income, unless the Unit has project-based rental assistance or subsidy, or is supported by a capitalized operating reserve agreement.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15% must be supported with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) For Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-

Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI);

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once; and

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days. Approved Developments should be determined by:

(I) the HTC Property Inventory that is published on the Department's website as of December 31, 2023, for competitive housing tax credit Applications;

(II) the most recent HTC Property Inventory that is published on the Department's website one month prior to the Application date of non-competitive housing tax credit and Direct Loan Applications.

(iii) Unstabilized Comparable Units that are located in close proximity to the subject PMA if they are likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts; the Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i) (relating to Feasibility Conclusion).

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter (relating to Feasibility Conclusion).

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(13) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in subsection (c)(1)(B) and (C) of this section (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§11.304. Appraisal Rules and Guidelines.

(a) General Provision.

(1) An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(2) If an appraisal is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the appraisal must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378. (b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(b) Appraiser Qualifications. The appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(c) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and any deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead- based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable:

(I) Property rights conveyed;

(II) Financing terms;

(III) Conditions of sale;

(IV) Location;

(V) Highest and best use;

(VI) Physical characteristics (e.g., topography, size, shape, etc.); and

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the Underwriter with

a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the current restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable

marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(d) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§11.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, and recommend specific testing if necessary;

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities (does not include liquified petroleum gas containers with a capacity of less than 125 gallons on-site or within 0.25 miles of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10 or any subsequent standards as published).

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§11.306. Scope and Cost Review Guidelines.

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018, or any subsequent

standards as published)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work and potentially impact costs. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points. It is the responsibility of the Applicant to inform the report author of those requirements in the scope of work; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead- Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restrictions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports; and

(4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(j) Scope of Work Narrative. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must provide a Scope of Work Narrative, consisting of:

(1) A detailed description of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced;

(2) For historic structures, a description of each aspect of the building(s) that qualifies it as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation of the Development; and

(3) a narrative of the consolidated scope of work for the proposed rehabilitation for each major system and components.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§11.901. Fee Schedule.

Any unpaid fees, as stated in this section, will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. Applicants will be required to pay any insufficient payment fees charged to the Department by the State Comptroller. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, unless prohibited by other parts of this Chapter, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee. For any payment that must be submitted in accordance with this chapter, staff may grant relief of the associated deadline for that payment for unusual or unpredictable circumstances that are outside of the Applicant's control such as inclement weather or failed deliveries." Applicants must submit any payment due under this chapter and operate under the assumption that the deadline for such payment is final.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Competitive HTC Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a Competitive HTC pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial

processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. For Applicants having submitted a Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if Direct Loan funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the Direct Loan Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. For Competitive HTC Applications, in no instance will a refund of the Application fee be made after final awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (6) and (7) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, unless an extension was requested, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 30 days after the Certificate of Reservation expiration deadline.

(8) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 than what was reflected in the Determination Notice for Tax-Exempt Bond Developments must be submitted with a fee equal to 4% of the amount of the credit increase for one year.

(9) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by an extension fee of $2,500. Fees for each subsequent extension request on the same activity will increase by increments of $500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity. An extension fee of the deadline to submit the Determination Notice and associated documents will not be required, provided a written request was submitted to the Department.

(10) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500 in order for the request to be processed. Fees for each subsequent amendment request related to the same Application will increase by increments of $500. A subsequent request, related to the same Application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000. Amendment fees and fee increases are not required for the Direct Loan programs during the Federal Affordability Period.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(12) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(13) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of $3,000.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing

fee of $1,000. Ownership Transfer fees are not required for Direct Loan only Developments during the Federal Affordability Period.

(15) Unused Credit or Penalty Fee for Competitive HTC Applications. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. A penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required to, issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties.

(16) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments, HTC Developments that are layered with Direct Loan funds, or upon the completion of the Development Period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only the amount due will equal $40 per low-income unit. For Direct Loan Only Developments the fee will be $34 per Direct Loan Units, including HOME Match Eligible Units. Developments with both HTCs and Direct Loan, including HOME Match Eligible Units, will only pay one fee equal to $40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of after Project Completion. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. For Direct Loan only Developments, the fee must be paid prior to the release of final retainage. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(17) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(18) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the Housing Tax Credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§11.902. Appeals Process.

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not layered with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, and underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a requested change to a Commitment or Determination Notice;

(6) Denial of a requested change to a loan agreement;

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715(d).

(f) If there is insufficient time for the Executive Director to respond to a Competitive Housing Tax Credit Application appeal prior to the agenda being posted for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda prior to the Executive Director's issuance of a response.

(g) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

(h) The decision of the Board regarding an appeal is the final decision of the Department.

(i) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903. Adherence to Obligations. (§2306.6720).

Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title (relating to Administrative Penalties) the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; or

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§11.904. Alternative Dispute Resolution (ADR) Policy.

In accordance with Tex. Gov't Code §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

§11.905. General Information for Commitments or Determination Notices.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and the Department's rules, all provisions of Commitment, Determination Notice, and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this title (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. For Tax-Exempt Bond Developments utilizing a local issuer, the Determination Notice expiration date may be extended for a period not to exceed 5 calendar days, upon request. For

Tax-Exempt Bond Developments utilizing TDHCA as the bond issuer, the expiration date may be extended to coincide with the closing date. If the requirements of the Determination Notice, and any conditions of the Determination Notice are met, the Determination Notice shall be valid for a period of one year from the effective date of the Determination Notice, without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. In instances where the Certificate of Reservation is withdrawn after the Determination Notice has been issued and a new Certification of Reservation is issued, staff will not re-issue the Determination Notice. After one year from the effective date of the Determination Notice, if a new Certificate of Reservation or Traditional Carryforward Reservation is issued, the Applicant will be required to contact the Department in order to have a new Determination Notice issued and a new Application must be submitted. Such Application submission must meet the requirements of §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission). If more than a year has not passed from the effective date of the Determination Notice, yet an Applicant desires to have a new Determination Notice issued that reflects a different recommended credit amount, then a new Application must be submitted that meets the requirements of §11.201(2) of this chapter.

(c) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (7) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect.

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect.

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application.

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions provided for in Chapter 1, Subchapter C of this title (relating to the Previous Participation Review, or any other conditions of the award required to be met at Commitment or Determination Notice.

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this title (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(8) For Competitive HTC Applications, for any documentation that must be submitted in accordance with this section, staff may grant relief of the associated deadline, for unusual or unpredictable circumstances that are outside of the Applicant's control such as inclement weather or failed deliveries."Applicants must submit any payment due under this chapter and operate under the assumption that the deadline for such payment is final.

(d) Post Bond Closing Documentation Requirements. Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (6) of this subsection.

(1) Training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than three years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates. The Development Owner individual reflected on the certificate must be identified on the organizational chart as having Control.

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than three years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates.

(3) Evidence that the financing has closed, such as an executed settlement statement.

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(5) An initial construction status report consisting of items from subsection (h)(1) - (5) of this title (relating to Construction Status Reports).

(6) A current survey or plat of the Development Site prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the floodplain areas and show all easements recorded against the property and encroachments.

§11.907. Carryover Agreement General Requirements and Required Documentation.

Carryover (Competitive HTC Only). All Developments that received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar

for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this title (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1009

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§11.1001. General.

(a) This subchapter applies only to 2024 State Housing Tax Credits to supplement Competitive HTC awards during the July Board meeting of the Department at which final awards of credits are authorized or to supplement Tax-Exempt Bond Developments.

(b) For Competitive HTC Applications, submissions required to make a request for State Housing Tax Credits are considered a supplement to the original Application. Requests for State Housing Tax Credits are not considered Applications under the 2024 HTC Competitive Cycle nor are they part of the 2024 Application Round.

(c) For Competitive HTC Applications, an allocation of State Housing Tax Credits will be processed as a Material Amendment to the Application under §10.405 of this title (relating to Amendments and Extensions).

(d) For Competitive HTC Applications, revisions to costs included in a request for State Housing Tax Credits will not have an impact on points originally awarded for Costs of Development per Square Foot or Leveraging (§§11.9(e)(2) and (4) of this title, respectively).

(e) Tax-Exempt Bond Developments shall meet the requirements of §11.1009 of this chapter (relating to State Housing Tax Credits for Tax-Exempt Bond Developments).

(f) Developments with HOME funds from the Department or another Participating Jurisdiction, will enter into a Contract and a LURA for HOME Match Eligible Units.

§11.1002. Program Calendar for State Housing Tax Credits Associated with Competitive HTC Applications.

Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension.
Figure: 10 TAC §11.1002

§11.1003. State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

(a) Intent to Request State Housing Tax Credit Allocation. Only those Applicants who elect to request an allocation of State Housing Tax Credits from the Department by the Full Application Delivery Date specified in §11.2(a) or §11.2(b) of this subchapter (relating to Program Calendar) are eligible to submit a Request for State Housing Tax Credits. This subsection does not apply to prior year applications eligible for a Priority Allocation under §11.1004

(b) Requests for State Housing Tax Credits must be received by the deadline specified in §11.1002 of this subchapter (relating to Program Calendar for State Housing Tax Credits) in the format required by the Department.

(c) Third Party Requests for Administrative Deficiency. Due to the nature of the State Housing Tax Credit process and reliance on the Original Application and scores, the Third Party Request for Administrative Deficiency process will not be utilized during the State Housing Tax Credit process under this subchapter.

§11.1004. Set-Aside for Previously Awarded Developments for Competitive HTC Applications.

As established under §171.566 of the Tax Code, a Priority Allocation of five million will be allocated to previously awarded Developments which the Department determines require an allocation of credits under this subsection to secure feasibility. Requests for the allocation under this subsection must meet the following criteria to be eligible for the award.

(1) Must not be financed through tax exempt bonds;

(2) The Owners or Developers of which have owned the land necessary for the Development since at least December 31, 2022; and

(3) Received an allocation of federal tax credits under the QAP issued by the Department for 2021 or 2022.

§11.1005. Procedural Requirements for Requests for State Housing Tax Credits Associated with Competitive HTC Applications.

(a) The procedures and requirements of §11.201 of this chapter (relating to Procedural Requirements for Application Submission) will generally apply to Requests for State Housing Tax Credits, unless otherwise specified in this Subchapter.

(b) The Original Application will be relied upon, as deemed final and reviewed by staff as part of the original award; the request for State Housing Tax Credits must only include the items authorized in this subchapter. Architectural drawings, or other documents that relate to changes to the Application other than revisions to the financing structure may not be submitted. The Applicant must submit the required documents as a single PDF document and all spreadsheet exhibits must also be provided in a usable spreadsheet format as further specified in the Department's released materials, which will be incorporated into the Original Application by staff, and become the full Request for State Housing Tax Credits.

§11.1006. Required Documentation for State Housing Tax Credit Request Submission Associated with Competitive HTC Applications.

(a) The purpose of this section is to identify the threshold documentation that is specific to the Request for State Housing Tax Credits submission, unless specifically indicated or otherwise required by Department rule. Only those documents listed herein may be submitted.

(b) Certification, Acknowledgement, and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must certify that there has been no change to the Applicant Eligibility or Original Owner Certification since the Original Application was submitted.

(c) Site Requirements and Restrictions. The Applicant must certify that there have been no changes from the Original Application that would require additional disclosure or mitigation, or render the proposed Development Site ineligible. Any change must be addressed under the requirements of §10.405 of this title (relating to Amendments and Extensions).

(d) Site Control. Applicants must certify that there has been no change to Site Control, other than extensions or purchase by the Applicant, since the Original Application was submitted. If the nature of Site Control has changed, State Housing Tax Credit Request must submit the appropriate documentation as described in §11.204(9) of this chapter.

(e) Zoning. (§2306.6705(5)) If the zoning status of the Development has changed since the Original Application, the Request for State Housing Tax Credits must include all requirements of §11.204(10) of this chapter (relating to Zoning).

(f) Applicants who elect to request an allocation of State Housing Tax Credits must include a term sheet from a syndicator that, at a minimum, includes:

(1) An estimate of the amount of equity dollars expected to be raised for the Development;

(2) The amount of State Housing Tax Credits requested for allocation to the Development Owner

(3) Pay-in schedules;

(4) Syndicator consulting fees and other syndication costs; and

(5) An acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

§11.1007. State Housing Tax Credits Underwriting and Loan Policy Associated with Competitive HTC.

Requests for State Housing Tax Credits will only be reviewed for items addressed in this subchapter. In requests for State Housing Tax Credits the Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the Developer Fee amounts in the published Real Estate Analysis report for the Original Application. The Real Estate Analysis Division will publish a memo for the State Housing Tax Credit allocation serving as a supplement to the report for the Original Application.

§11.1008. State Housing Tax Credits Selection Criteria Associated with Competitive HTC Applications.

(a) For Qualified Developments not financed through tax exempt bonds, for years in which the Department receives requests for more State Housing Tax Credits than are available, the Department shall prioritize applications proposing the most additional low income Units for households at or below 30% of AMGI relative to the State Housing Tax Credit Request. Units for households at or below 30% of AMGI proposed in the original application shall not be considered. The Department will award based solely upon new Units proposed in exchange for tax credit equity. The initial State Housing Tax Credit award shall be made to the Applicant with the lowest request amount per additional Units provided. Subsequent awards shall be made using the same metric until the Department can no longer fund a full credit request. In the case of a tie, preference shall be determined based upon the Original Application scores under §11.9 and, if applicable, the tie breaker factors established under §11.7.

(b) An Application shall be ineligible for selection if the Development is located in an area with any Neighborhood Risk Factor described in §11.101(a)(3), and it did not receive an allocation of federal tax credits under the QAP issued by the department for 2021 or 2022.

§11.1009. State Housing Tax Credits for Tax-Exempt Bond Developments.

(a) The request for State Housing Tax Credits shall be reflected in the Uniform Multifamily Application, as prescribed by the Department and further explained in the Multifamily Programs Procedures Manual, and shall include a term sheet from a syndicator that includes the amount of State Housing Tax Credits requested and pricing information.

(b) For Applications that will receive a Certificate of Reservation from the Texas Bond Review Board in January, an Applicant may submit the complete Application (which may or may not include Third Party Reports, as more fully described under §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission)), from January 2 through January 31. The Department shall utilize a first-come, first-served system for establishing priority of requests for the portion of the State Housing Tax Credit available for Tax-Exempt Bond Developments.

(c) Once the number of Applications submitted exceed the amount of State Housing Tax Credits for Tax-Exempt Bond Developments the Department can allocate, Applicants for those Applications will be provided notice to that effect and be given the opportunity

to modify their Application through the Administrative Deficiency process to exclude the request for the State Housing Tax Credit.

(d) Should there be an amount of State Housing Tax Credits to allocate to an Application and that Application is withdrawn or terminated, or the Certificate of Reservation is withdrawn from the Bond Review Board, the next Application in line, based on the received date will be notified that their Application will be underwritten with the State Housing Tax Credit. Alternatively, in cases where staff can make seamless adjustments to other line items to account for the lack of State HTC, staff may make such adjustments automatically and notify the Applicant accordingly.

(e) Applications submitted after January 31 and for which a Certificate of Reservation has been issued, may include a request for State Housing Tax Credits only if the Department has not reached the maximum amount of State Housing Tax Credits to allocate for Tax-Exempt Bond Developments.

(f) Qualified Developments will be issued a Determination Notice that will reflect both the State and Federal Housing Tax Credit Amounts, which for purposes of the State Housing Tax Credit will constitute the Allocation Certificate pursuant to Tex. Gov't Code Chapters 171 and 233.

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

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Texas Department of Housing and Community Affairs
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 98. MOTORCYCLE OPERATOR TRAINING AND SAFETY

16 TAC §§98.10, 98.20 - 98.24, 98.27, 98.50, 98.60, 98.65, 98.70, 98.71, 98.76, 98.80, 98.104, 98.108, 98.112, 98.116

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 98, §§98.10, 98.20 - 98.23, 98.27, 98.50, 98.60, 98.65, 98.76, 98.80, 98.104, 98.108, 98.112, and 98.116; and new rules at §98.24 and §98.71, regarding the Motorcycle Operator Training and Safety program, without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5362). These rules will not be republished.

The Commission also adopts amendments to an existing rule at 16 TAC Chapter 98, §98.70, regarding the Motorcycle Operator Training and Safety program, with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5362). This rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 98, implement Texas Transportation Code, Chapter 662, Motorcycle Operator Training and Safety.

The adopted rules are necessary to implement Senate Bill (SB) 478, 88th Legislature, Regular Session (2023), which amends Chapter 662 by changing the requirements relating to instructor license eligibility and instructor training; creating the instructor training provider license; and altering the membership of the Motorcycle Safety Advisory Board. The adopted rules are also necessary to implement recommendations by the Advisory Board to remove unnecessary and burdensome requirements for motorcycle schools and instructors.

SB 478 changes the eligibility requirements for an instructor license by adding a requirement for the applicant to not have been convicted during the previous three years of two moving violations that resulted in an accident or three total moving violations; adding a requirement for the applicant to not have been convicted during the previous seven years of driving while intoxicated or certain similar offenses; and adding a requirement for the applicant to submit fingerprints for a national criminal history background check.

SB 478 changes the requirements relating to instructor training by replacing the existing requirement for the training to be administered by the Texas A&M Engineering Extension Service (TEEX) with a new requirement for the training to be conducted at any licensed motorcycle school by a licensed instructor training provider in accordance with Department rules and a course curriculum approved by the Department.

SB 478 creates the instructor training provider license and requires an applicant for the license to have held a motorcycle license for the previous two years, submit fingerprints for a national criminal history background check, and meet any additional requirement adopted by rule, including a fee for the issuance and renewal of the license. SB 478 also alters the membership of the advisory board by replacing the existing representative of TEEX with a member who holds an instructor training provider license.

The adopted rules implement SB 478 by making corresponding changes to the rules relating to definitions, instructor license eligibility, instructor training, audits, advisory board membership, fees, course requirements, and curriculum standards and by adding new rules relating to the eligibility for and responsibilities of an instructor training provider license.

The adopted rules implement recommendations by Department staff to ease reporting requirements for motorcycle schools and instructors by requiring them to report each injury, rather than each incident, and expedite reporting for serious injuries; to clarify how a motorcycle school may continue to operate through a change of ownership; and to remove unnecessary student admission requirements.

The adopted rules also implement recommendations by the Advisory Board to remove the first aid and CPR requirements for the instructor license; to remove the separate requirements for out-of-state applicants for the instructor license; and to remove the requirement for motorcycle schools to provide, for each renewal, a list of real property used for the training site, a list of

motorcycles used in training, and a list of instructors working at the school.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §98.10, Definitions, by removing the definition for "incident" because the term will be obsolete when motorcycle schools and instructors are required to report each injury instead of each incident; amending the definition for "instructor" to provide consistency with its statutory definition; replacing the term "instructor preparation course" with the term "instructor training course" and amending its definition to provide consistency with its statutory definition; creating a definition for "instructor training provider" to provide consistency with its statutory definition; amending the definition of "motorcycle school" to provide consistency with its statutory definition; and removing the definition for "TEEX" to reflect the removal of statutory references to TEEX in Chapter 662.

The adopted rules amend §98.20, "Instructor--License Required," by updating terminology to provide consistency with the changes made by SB 478 and removing unnecessary language.

The adopted rules amend §98.21, "Instructor--License Eligibility," by amending existing subsections (a)(3), (a)(5), (a)(8), and (a)(9) to provide consistency with the changes made by SB 478; removing existing subsection (a)(7), which requires first aid and CPR certification, which the Advisory Board advised were unnecessary and burdensome; and removing existing subsection (b) to allow applicants from outside the state to be eligible under the same rules that apply to applicants from within the state. The remaining provisions are relabeled accordingly.

The adopted rules amend §98.22 by changing the section title to "Instructor--Training Course"; updating terminology to provide consistency with the changes made by SB 478; revising subsection (a) to limit the section's applicability to instructor training courses conducted in Texas, to allow for applicants who have taken instructor training courses outside of Texas; and updating cross-references in subsection (b) to provide consistency with the changes to §98.21.

The adopted rules amend §98.23, "Instructor--License Term; Renewal," by adding new subsection (d) to provide the process for notifying an instructor when new fingerprints are necessary for license renewal; and updating cross-references in subsection (c)(2) to provide consistency with the changes to §98.21.

The adopted rules add new §98.24, "Instructor Training Provider--License," to prohibit an individual from offering or conducting an instructor training course without an instructor training provider license, to provide the eligibility requirements for an instructor training provider license, and to provide the license term for an instructor training provider license.

The adopted rules amend §98.27, "Motorcycle School--License Term; Renewal" by updating subsection (c)(2) to remove the references to §98.26(4), (5), and (7), which consist of requirements to submit lists of property, motorcycles, and instructors, respectively. The Advisory Board advised that it is unnecessary and burdensome to require motorcycle schools to submit this information upon renewal.

The adopted rules amend §98.50, "Motorcycle School--Reporting Requirements," to require motorcycle schools to report each injury, rather than each incident, and require expedited reporting for injuries that require immediate medical attention beyond first aid.

The adopted rules amend §98.60, Audits, to allow for department audits of instructor training providers.

The adopted rules amend §98.65, Advisory Board Membership, to provide consistency with the changes made by SB 478 to the advisory board membership in Transportation Code §662.0037.

The adopted rules amend §98.70, "Instructor--Responsibilities," by updating a cross-reference in subsection (a)(3) to provide consistency with changes made to §98.21; removing existing subsection (a)(4) to provide consistency with changes made to §98.21; updating existing subsection (a)(5) to provide consistency with changes made to §98.50; and renumbering the remaining provisions accordingly. The adopted rule text includes a change to the proposed rule text of existing subsection (a)(9) recommended by Department staff to correct a cross-reference to §98.102(b)(2).

The adopted rules add new §98.71, "Instructor Training Provider--Responsibilities," to provide the responsibilities applicable to the holder of an instructor training provider license, including the reporting and records maintenance requirements for each instructor training course provided.

The adopted rules amend §98.76, "Motorcycle School--Change of Ownership," to provide clarity on the continued operation of a motorcycle school in the event of a change of its ownership.

The adopted rules amend §98.80, Fees, to provide the fees for the issuance or renewal of an instructor training provider license, the approval of an instructor training course, duplicate or replacement licenses, late renewals, dishonored payments, and criminal history evaluation letters.

The adopted rules amend §98.104, Student Admission Requirements, by removing the requirement for an individual to hold a driver license or have completed driver education to enroll in an entry-level course. This requirement is unnecessary because an entry-level course does not involve the operation of a motorcycle on a public roadway or require knowledge of traffic laws.

The adopted rules amend §98.108, Course Requirements, by updating terminology to provide consistency with the changes made by SB 478.

The adopted rules amend §98.112, "Curriculum Standards--Entry-Level Course," by updating terminology to provide consistency with the changes made by SB 478.

The adopted rules amend §98.116 by changing the section title to "Curriculum Standards--Instructor Training Course" to update terminology and by adding a requirement that the curriculum for an instructor training course must have an evaluation process to ensure an individual can competently teach all components of the entry-level course.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5362). The public comment period closed on October 23, 2023. The Department received comments from three interested parties on the proposed rules. The public comments are summarized below.

Comment: One comment recommended amending §98.10 by removing the phrase "consisting of a classroom and range" from the definition for "training site" because some Department-approved curricula do not require a physical classroom.

Department Response: The Department disagrees with the comment because §98.100(b) already makes clear that the classroom is not required to be a physical building and that it can be a virtual classroom conducted online. The Department did not make any changes to the proposed rules as a result of this comment.

Comment: One comment disagreed with the removal of the first aid requirement for an instructor license in existing §98.21(7) because the commenter felt it is a reasonable requirement.

Department Response: The Department disagrees with the comment because the Advisory Board voted on the issue at its August 31, 2023, meeting and determined that it was an unnecessary and burdensome requirement that should be removed. The Department did not make any changes to the proposed rules as a result of the comment.

Comment: One comment questioned whether the removal of the first aid and CPR requirements from §98.21 would factor into the requirement in §98.70 for an instructor to "act immediately to appropriately address the medical needs of any person injured at the training site and summon emergency medical services if necessary."

Department Response: The Department agrees with the comment. Instructors would not be required to provide first aid or CPR for injuries because instructors would no longer be required to have those skills. The Department notes that motorcycle schools can choose to impose these requirements on their instructors if they choose to do so. The Department did not make any changes to the proposed rules as a result of the comment.

Comment: One comment agreed with the proposed amendments to §98.50 and §98.70 that require reporting of each injury rather than each incident because the commenter believes the change is consistent with requirements of course providers.

Department Response: The Department appreciates the comment in support of the proposed rule. The Department did not make any changes to the proposed rules as a result of the comment.

Comment: Regarding the proposed amendments to §98.104, one comment questioned whether traffic law testing would occur separately when the student attempts to obtain a motorcycle license.

Department Response: The Department agrees with the comment. Texas Transportation Code §521.1601 requires a person to complete and pass a driver education and traffic safety course before being issued a driver's license, which includes a Class M license, from the Texas Department of Public Safety. The Department did not make any changes to the proposed rules as a result of the comment.

Comment: One comment questioned whether removal of the phrase "on the day the course begins" from §98.104(a) would allow students to attend a course as long as they turn 15 years of age by the end date of the course.

Department Response: The Department disagrees with the comment. The phrase is unnecessary because the remaining language is sufficiently clear to prohibit someone younger than 15 years of age from taking any part of the course: "Entry-level courses are open to any individual who is at least 15 years old." The Department did not make any changes to the proposed rules as a result of the comment.

Comment: Regarding the removal of §98.104(a)(1), (2), and (3), one comment questions what the new standard will be to verify the identity of a student for purposes of the issuance of a course completion certificate.

Department Response: The Department disagrees with the comment's implication that the Department must articulate such a standard. Motorcycle schools must take the necessary actions to ensure they do not issue a course completion certificate to a person who has not successfully completed the course in violation of §98.72(b)(1). The Department did not make any changes to the proposed rules as a result of the comment.

Comment: Regarding the removal of §98.104(a)(1), (2), and (3), one comment opposes the change because a particular course curriculum states that a student should know the rules of the road before taking the course and the commenter believes this will be difficult to verify without these options.

Department Response: The Department disagrees with the comment's implication that motorcycle schools do not have the option to continue to require students to provide the information in §98.104(a)(1), (2), and (3) to ensure compliance with any related curriculum requirements. The Department did not make any changes to the proposed rules as a result of the comment.

Comment: Regarding the removal of §98.104(a)(1), (2), and (3), one comment states that the Texas Department of Public Safety has requirements for minors before enrolling in a motorcycle safety course and that removing these rules would put the students in violation of this process.

Department Response: The Department disagrees with the comment. The Department has not identified any such conflict with rules of the Texas Department of Public Safety. The Department did not make any changes to the proposed rules as a result of the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Motorcycle Safety Advisory Board met on August 31, 2023, to discuss the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment. The Advisory Board attempted to meet on November 3, 2023, to discuss the proposed rules and the public comments received; however, a quorum was not present. The Department recommended that the Commission adopt the proposed rules as published in the *Texas Register* with a change to §98.70 as explained in the Section-by-Section Summary. At its meeting on December 1, 2023, the Commission adopted the proposed rules with changes as recommended by the Department.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Transportation Code, Chapter 662, Motorcycle Operator Training and Safety.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an

applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 662. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is Senate Bill 616, 86th Legislature, Regular Session (2019) and Senate Bill 478, 88th Legislature, Regular Session (2023).

§98.70. Instructor--Responsibilities.

(a) An instructor must:

(1) notify the department of any change in the instructor's address, phone number, or email address within 15 days from the date of the change;

(2) maintain a valid driver's license that entitles the license holder to operate a motorcycle on a public road;

(3) maintain a driving record that meets the requirements of §98.21(5);

(4) act immediately to appropriately address the medical needs of any person injured at the training site and summon emergency medical services if necessary;

(5) report each injury to the motorcycle school in a timely manner;

(6) cooperate with all department audits and investigations and provide all requested documents;

(7) before each course, inspect each motorcycle to be used on the range to ensure the motorcycle meets the requirements of §98.102;

(8) ensure that each motorcycle provided by a student meets the insurance requirements of §98.102(b)(2) before the motorcycle is used on the range;

(9) provide instruction only in compliance with a curriculum approved by the department;

(10) be capable of instructing the entire course and providing technically correct riding demonstrations;

(11) comply with the student-to-instructor ratio requirements in §98.108;

(12) supervise all students and personnel on the range;

(13) wear the protective gear required by §98.108(e) whenever riding a motorcycle to, from, or during rider training activities;

(14) ensure all students wear the protective gear required by §98.108(e) when participating in the on-cycle activities of the course; and

(15) deal honestly with members of the public and the department.

(b) An instructor must not:

(1) instruct a student if either the instructor or student exhibits signs of impairment from the use of an alcoholic beverage, controlled substance, drug, or dangerous drug, as defined in Texas Penal Code §1.07; or

(2) complete, issue, or validate a certificate of course completion to a person who has not successfully completed the course.

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

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

TRD-202304671
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: January 1, 2024
Proposal publication date: September 22, 2023
For further information, please call: (512) 463-7750

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CHAPTER 115. MIDWIVES

16 TAC §115.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 115, §115.80, regarding the Midwives program, without changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5881). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 115, implement Texas Occupations Code, Chapter 203, Midwives.

The adopted rule lowers the application fee for an initial midwife license from $275 to $195 and lowers the application fee for renewal of a midwife license from $550 to $390. The adopted rule is necessary to set fees in amounts reasonable and necessary to cover the costs of administering the Midwives program, as required by Texas Occupations Code §51.202. Department staff reviewed the costs of administering the Midwives program and determined that license application fees should be lowered so that the revenue from the fees does not exceed the costs of administering the program.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §115.80, Fees, by reducing the midwife license initial application fee in paragraph (1) from $275 to $195 and by reducing the midwife license renewal application fee in paragraph (2) from $550 to $390 for each two-year renewal period.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5881). The public comment period closed on November 13, 2023. The Department received comments from two interested parties on the proposed rule. The public comments are summarized below.

Comment: One comment was in support of the proposed rule and thanked the Department for the reduction of midwife licensing fees.

Department Response: The Department appreciates the comment in support of the proposed rule. The Department did not make any changes to the proposed rule as a result of the comment.

Comment: One comment was in support of lowering the midwife license renewal fees and suggested that there also be a reduced fee for midwives who can prove that their income from midwifery is below a certain threshold.

Department Response: The Department appreciates the comment in support of reducing license renewal fees, but the Department disagrees with the suggestion that the fee amounts should be based on income level because the Department does not have clearstatutory authority to set fees in such a manner. The Department did not make any changes to the proposed rule as a result of the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Midwives Advisory Board attempted to meet on October 30, 2023, to discuss the proposed rule and the public comments received, but there was not a quorum present, so the Advisory Board could not make a recommendation. The Department recommended that the Commission adopt the proposed rule as published in the *Texas Register.* At its meeting on December 1, 2023, the Commission adopted the proposed rule.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the adopted rule.

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

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

TRD-202304665
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: January 1, 2024
Proposal publication date: October 13, 2023
For further information, please call: (512) 463-7750

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TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

The Texas Medical Disclosure Panel (Panel) adopts the repeal of Texas Administrative Code (TAC), Title 25, Part 7, Chapter 601, concerning Informed Consent, and replacement with new Chapter 601, concerning General. The repealed chapter consists of §§601.1 - 601.9. The new chapter consists of §601.1 and §601.2.

The repeal of §§601.1 - 601.9 and new §601.1 and §601.2 are adopted without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4081). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals and new rules are adopted in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

This project repeals current 25 TAC Chapter 601, Informed Consent, and replaces it in a nonsubstantive manner with multiple chapters in order to make the Panel's determinations regarding risks and hazards related to medical care and surgical procedures more accessible to the public and more user-friendly.

The new Chapter 601 contains the purpose and history of the rules at 25 TAC Part 7, Texas Medical Disclosure Panel.

The new Chapter 602 lists each type of treatment and procedure that the Panel has determined requires full disclosure of the risks and hazards associated with it in a separate section, instead of in a single section at the repealed §601.2. These new rules appear elsewhere in this issue of the *Texas Register.*

The new Chapter 603 lists each type of treatment and procedure that the Panel has determined requires no disclosure of the risks and hazards associated with it in a separate section, instead of in a single section at the repealed §601.3. These new rules appear elsewhere in this issue of the *Texas Register.*

The new Chapter 604 contains general, radiation therapy, electroconvulsive therapy, hysterectomy, and anesthesia and/or perioperative pain management disclosure and consent forms. These new rules appear elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

The repeal of §§601.1 - 601.9 removes the rules from Chapter 601, concerning Informed Consent, and places them in new Chapters 601 - 604.

The new §601.1 outlines the purpose of the chapter, where the list of treatments and procedures requiring full disclosure by a physician or health care provider will be found, where the list of treatments and procedures requiring no disclosure by a physician or a health care provider will be found, and where the disclosure and consent forms adopted by the Panel will be found.

The new §601.2 provides an overview of the history of the procedures requiring full disclosure--List A and the procedures requiring no disclosure--List B prior to this rule project.

PUBLIC COMMENT

The 31-day public comment period ended August 28, 2023.

During this period, the Panel received comments from two commenters, representing the Texas Medical Association (TMA) and the Texas Society of Anesthesiologists (TSA). A summary of the comments and the Panel's responses follow.

Comment: The TMA thanked the Panel for its work on the revisions and recommended nonsubstantive changes to correct typographical and citation errors in new Chapters 602 and 604.

Response: The Panel acknowledges the comment and includes the changes in Chapters 602 and 604 published elsewhere in this issue of the *Texas Register.*

Comment: The TSA thanked the Panel and said it supports the efforts to convey the purpose of the Panel clearly and effectively to the public. The TSA participated in the review process and supports the version of the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia) that is proposed in §604.5 and was adopted by the Panel in April 2023.

Response: The Panel acknowledges the comment.

25 TAC §§601.1 - 601.9

STATUTORY AUTHORITY

The repeals are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

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

Filed with the Office of the Secretary of State on December 6, 2023.

TRD-202304583
Dr. Noah Appel
Panel Chairman
Texas Medical Disclosure Panel
Effective date: December 26, 2023
Proposal publication date: July 28, 2023
For further information, please call: (512) 438-2889

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25 TAC §601.1, §601.2

STATUTORY AUTHORITY

The new sections are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

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

Filed with the Office of the Secretary of State on December 6, 2023.

TRD-202304584
Dr. Noah Appel
Panel Chairman
Texas Medical Disclosure Panel
Effective date: December 26, 2023
Proposal publication date: July 28, 2023
For further information, please call: (512) 438-2889

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CHAPTER 602. PROCEDURE REQUIRING FULL DISCLOSURE OF SPECIFIC RISKS AND HAZARDS--LIST A

25 TAC §§602.1 - 602.22

The Texas Medical Disclosure Panel (Panel) adopts new Texas Administrative Code (TAC), Title 25, Part 7, Chapter 602, concerning Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A. The new chapter consists of §§602.1 - 602.22.

New §§602.2, 602.7, 602.8, and 602.15 are adopted with changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4085). These rules will be republished.

New §§602.1, 602.3 - 602.6, 602.9 - 602.14, and 602.16 - 602.22 are adopted without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4085). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

These new rules are adopted in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

This project repeals current 25 TAC Chapter 601, Informed Consent, and replaces it in a nonsubstantive manner with multiple chapters in order to make the Panel's determinations regarding risks and hazards related to medical care and surgical procedures more accessible to the public and more user-friendly.

The new Chapter 601 contains the purpose and history of the rules at 25 TAC Part 7, Texas Medical Disclosure Panel. These new rules appear elsewhere in this issue of the *Texas Register.*

The new Chapter 602 lists each type of treatment and procedure that the Panel has determined requires full disclosure of the risks and hazards associated with it in a separate section, instead of in a single section at the repealed §601.2.

The new Chapter 603 lists each type of treatment and procedure that the Panel has determined requires no disclosure of the risks and hazards associated with it in a separate section, instead of in a single section at the repealed §601.3. These new rules appear elsewhere in this issue of the *Texas Register.*

The new Chapter 604 contains general, radiation therapy, electroconvulsive therapy, hysterectomy, and anesthesia and/or perioperative pain management disclosure and consent forms.

These new rules appear elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

The new §602.1, Anesthesia treatments and procedures, lists the anesthesia treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.2, Cardiovascular system treatments and procedures, lists the cardiovascular system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.3, Digestive system treatments and procedures, lists the digestive system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.4, Ear treatments and procedures, lists the ear treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.5, Endocrine system treatments and procedures, lists the endocrine system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.6, Eye treatments and procedures, lists the eye treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.7, Female genital system treatments and procedures, lists the female genital system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.8, Hematic and lymphatic system treatments and procedures, lists the hematic and lymphatic system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.9, Breast surgery (non-cosmetic) treatments and procedures, lists the breast surgery (non-cosmetic) treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.10, Male genital system treatments and procedures, lists the male genital system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.11, Maternity and related cases treatments and procedures, lists the maternity and related cases treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.12, Musculoskeletal system treatments and procedures, lists the musculoskeletal system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.13, Nervous system treatments and procedures, lists the nervous system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.14, Radiology treatments and procedures, lists the radiology treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.15, Respiratory system treatments and procedures, lists the respiratory system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.16, Urinary system treatments and procedures, lists the urinary system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.17, Psychiatric treatments and procedures, lists the psychiatric treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.18, Radiation therapy treatments and procedures, lists the radiation therapy treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §601.19, Laparoscopic, thoracoscopic and robotic surgery treatments and procedures, lists the laparoscopic, thoracoscopic and robotic surgery treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.20, Pain management treatments and procedures, lists the pain management treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.21, Dental surgery treatments and procedures, lists the dental surgery treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

The new §602.22, Plastic surgery and surgery of the integumentary system treatments and procedures, lists the plastic surgery and surgery of the integumentary system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them.

PUBLIC COMMENT

The 31-day public comment period ended August 28, 2023.

During this period, the Panel received comments from two commenters, representing the Texas Medical Association (TMA) and the Texas Society of Anesthesiologists (TSA). A summary of the comments and the Panel's responses follow.

Comment: The TMA thanked the Panel for its work on the revisions and recommended correcting citation errors at §602.2(b)(6)(E) and §602.7(b)(6), and typographical errors in the heading of §602.8 and at §602.15(i)(3). The TMA also made a recommendation regarding Chapter 604.

Response: The Panel revises these sections as suggested and addresses the Chapter 604 recommendation published elsewhere in this issue of the *Texas Register.*

Comment: The TSA thanked the panel and said it supports the efforts to convey the purpose of the Panel clearly and effectively to the public. TSA participated in the review process and supports the version of the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia) that is proposed in §604.5 and was adopted by the Panel in April 2023.

Response: The Panel acknowledges the comment.

STATUTORY AUTHORITY

The new sections are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

§602.2. Cardiovascular System Treatments and Procedures.

(a) Cardiac.

(1) Coronary artery bypass.

(A) Acute myocardial infarction (heart attack).

(B) Hemorrhage (severe bleeding).

(C) Kidney failure.

(D) Stroke.

(E) Sudden death.

(F) Infection of chest wall/chest cavity.

(2) Heart valve replacement by open surgery, structural heart surgery.

(A) Acute myocardial infarction (heart attack).

(B) Hemorrhage (severe bleeding).

(C) Kidney failure.

(D) Stroke.

(E) Sudden death.

(F) Infection of chest wall/chest cavity.

(G) Valve related delayed onset infection.

(H) Malfunction of new valve.

(I) Persistence of problem for which surgery was performed, including need for repeat surgery.

(3) Heart transplant.

(A) Infection.

(B) Rejection.

(C) Death.

(4) Coronary angiography (Injection of contrast material into arteries of the heart), coronary angioplasty (opening narrowing in heart vessel), and coronary stent insertion (placement of permanent tube into heart blood vessel to open it).

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(B) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(C) Hemorrhage (severe bleeding).

(D) Myocardial infarction (heart attack).

(E) Worsening of the condition for which the procedure is being done.

(F) Sudden death.

(G) Stroke.

(H) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(5) Percutaneous (through the skin) or minimally invasive heart valve insertion/replacement.

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(B) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(C) Hemorrhage (severe bleeding).

(D) Myocardial infarction (heart attack).

(E) Worsening of the condition for which the procedure is being done.

(F) Sudden death.

(G) Stroke.

(H) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Malfunction of new valve.

(K) Need for permanent pacemaker implantation.

(6) Left atrial appendage closure (closing of small pouch on left side of heart) - percutaneous (through the skin) or minimally invasive.

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(B) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(C) Hemorrhage (severe bleeding).

(D) Myocardial infarction (heart attack).

(E) Worsening of the condition for which the procedure is being done.

(F) Sudden death.

(G) Stroke.

(H) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Device embolization (device moves from intended location).

(K) Pericardial effusion (development of fluid in the sack around the heart) and cardiac tamponade (fluid around heart causing too much pressure for heart to pump properly).

(7) Patent foramen ovale/atrial septal defect/ventricular septal defect closure by percutaneous (through the skin) or minimally

invasive procedure (closing of abnormal hole between the chambers of the heart).

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(B) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(C) Hemorrhage (severe bleeding).

(D) Myocardial infarction (heart attack).

(E) Worsening of the condition for which the procedure is being done.

(F) Sudden death.

(G) Stroke.

(H) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Atrial fibrillation (irregular heart rhythm).

(K) Pulmonary embolus (development of blood clot that travels to blood vessels in lungs).

(L) Device embolization (device moves from where it is placed).

(M) Cardiac perforation (creation of hole in wall of heart).

(8) Electrophysiology studies (exams of heart rhythm), arrhythmia ablation (procedure to control or stop abnormal heart rhythms).

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(B) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(C) Hemorrhage (severe bleeding).

(D) Myocardial infarction (heart attack).

(E) Worsening of the condition for which the procedure is being done.

(F) Sudden death.

(G) Stroke.

(H) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Rupture of myocardium/cardiac perforation (hole in wall of heart).

(K) Cause or worsening of arrhythmia (damage to heart electrical system causing abnormal heart rhythm), possibly requiring permanent pacemaker implantation, possibly life threatening.

(L) Pulmonary vein stenosis (narrowing of blood vessel going from lung to heart.

(9) Pacemaker insertion, AICD insertion (implanted device to shock the heart out of an abnormal rhythm).

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(B) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(C) Hemorrhage (severe bleeding).

(D) Myocardial infarction (heart attack).

(E) Worsening of the condition for which the procedure is being done.

(F) Sudden death.

(G) Stroke.

(H) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Rupture of myocardium/cardiac perforation (hole in wall of heart).

(K) Cause or worsening of arrhythmia (damage to heart electrical system causing abnormal heart rhythm), possibly requiring permanent pacemaker implantation, possibly life threatening.

(L) Device related delayed onset infection (infection related to the device that happens at some time after surgery).

(10) Electrical cardioversion (shocking the heart out of an abnormal rhythm).

(A) Heart arrhythmias (abnormal heart rhythm), possibly life threatening.

(B) Skin burns on chest.

(11) Stress testing.

(A) Acute myocardial infarction (heart attack).

(B) Heart arrhythmias (abnormal heart rhythm), possibly life threatening.

(12) Transesophageal echocardiography (ultrasound exam of the heart from inside the throat).

(A) Sore throat.

(B) Vocal cord damage.

(C) Esophageal perforation (hole or tear in tube from mouth to stomach).

(13) Circulatory assist devices (devices to help heart pump blood).

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(B) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(C) Hemorrhage (severe bleeding).

(D) Myocardial infarction (heart attack).

(E) Worsening of the condition for which the procedure is being done.

(F) Sudden death.

(G) Stroke.

(H) Contrast nephropathy or other kidney injury (kidney damage due to the contrast agent used during the procedure or procedure itself).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Hemorrhage (severe bleeding) possibly leading to sudden death.

(K) Hemolysis (blood cells get broken apart).

(L) Right heart failure (poor functioning of the side of heart not assisted by device).

(M) Acquired von Willebrand syndrome (platelets do not work).

(N) Arrhythmia (irregular or abnormal heart rhythm).

(O) Cardiac or vascular injury or perforation (hole in heart or blood vessel).

(P) Limb ischemia (lack of blood flow or oxygen to limb that device placed through).

(Q) Device migration or malfunction.

(R) Exposure of device/wound break down with need for surgery to cover/reimplant.

(14) Extracorporeal Membrane Oxygenation (ECMO).

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(B) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(C) Hemorrhage (severe bleeding).

(D) Myocardial infarction (heart attack).

(E) Worsening of the condition for which the procedure is being done.

(F) Sudden death.

(G) Stroke.

(H) Contrast nephropathy or other kidney injury (kidney damage due to the contrast agent used during the procedure or procedure itself).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Thrombocytopenia (low platelets) or other coagulopathy (blood thinning).

(K) Vascular or cardiac perforation (hole in blood vessel or heart).

(L) Seizure.

(M) Device migration or malfunction.

(N) Ischemia to limb (lack of blood flow or oxygen to limb that device placed through).

(O) Thromboembolism (blood clots in blood vessels or heart and possibly traveling to blood vessels in lungs).

(b) Vascular.

(1) Open surgical repair of aortic, subclavian, iliac, or other artery aneurysms or occlusions, arterial or venous bypass or other vascular surgery.

(A) Hemorrhage (severe bleeding).

(B) Paraplegia (unable to move limbs) (for surgery involving the aorta or other blood vessels to the spine).

(C) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part).

(D) Worsening of the condition for which the procedure is being done.

(E) Stroke (for surgery involving blood vessels supplying the neck or head).

(F) Kidney damage.

(G) Myocardial infarction (heart attack).

(H) Infection of graft (material used to repair blood vessel).

(2) Angiography (inclusive of aortography, arteriography, venography) - Injection of contrast material into blood vessels.

(A) Injury to or occlusion (blocking) of artery which may require immediate surgery or other intervention.

(B) Hemorrhage (severe bleeding).

(C) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(D) Worsening of the condition for which the procedure is being done.

(E) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(F) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(G) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(H) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(3) Angioplasty (intravascular dilatation technique).

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(B) Hemorrhage (severe bleeding).

(C) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(D) Worsening of the condition for which the procedure is being done.

(E) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(F) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(G) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(H) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(4) Endovascular stenting (placement of permanent tube into blood vessel to open it) of any portion of the aorta, iliac or carotid artery or other (peripheral) arteries or veins.

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(B) Hemorrhage (severe bleeding).

(C) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(D) Worsening of the condition for which the procedure is being done.

(E) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(F) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(G) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(H) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(I) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(J) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(K) Change in procedure to open surgical procedure.

(L) Failure to place stent/endoluminal graft (stent with fabric covering it).

(M) Stent migration (stent moves from location in which it was placed).

(N) Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures).

(5) Vascular thrombolysis (removal or dissolving of blood clots) - percutaneous (through the skin) (mechanical or chemical).

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(B) Hemorrhage (severe bleeding).

(C) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(D) Worsening of the condition for which the procedure is being done.

(E) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(F) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(G) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(H) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(I) Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices).

(J) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(K) Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(L) For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue).

(M) For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening).

(N) Need for emergency surgery.

(6) Angiography with occlusion techniques (including embolization and sclerosis) - therapeutic.

(A) For all embolizations/sclerosis:

(i) Injury to or occlusion (blocking) of blood vessel other than the one intended which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(vi) Unintended thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(vii) Loss or injury to body parts with potential need for surgery, including death of overlying skin for sclerotherapy/treatment of superficial lesions/vessels and nerve injury with associated pain, numbness or tingling or paralysis (inability to move).

(viii) Infection in the form of abscess (infected fluid collection) or septicemia (infection of blood stream).

(ix) Nontarget embolization (blocking of blood vessels other than those intended) which can result in injury to tissues supplied by those vessels.

(B) For procedures involving the thoracic aorta and/or vessels supplying the brain, spinal cord, head, neck or arms, these risks in addition to those under subparagraph (A) of this paragraph:

(i) Stroke.

(ii) Seizure.

(iii) Paralysis (inability to move).

(iv) Inflammation or other injury of nerves (for procedures involving blood vessels supplying the spine).

(v) For studies of the blood vessels of the brain: contrast-related, temporary blindness or memory loss.

(C) For female pelvic arterial embolizations including uterine fibroid embolization, these risks in addition to those under subparagraph(A) of this paragraph:

(i) Premature menopause with resulting sterility.

(ii) Injury to or infection involving the uterus which might necessitate hysterectomy (removal of the uterus) with resulting sterility.

(iii) After fibroid embolization: prolonged vaginal discharge.

(iv) After fibroid embolization: expulsion/delayed expulsion of fibroid tissue possibly requiring a procedure to deliver/remove the tissue.

(D) For male pelvic arterial embolizations, in addition to the risks under subparagraph (A) of this paragraph: impotence (difficulty with or inability to obtain penile erection).

(E) For embolizations of pulmonary arteriovenous fistulae/malformations, these risks in addition to those under subparagraph (A) of this paragraph:

(i) New or worsening pulmonary hypertension (high blood pressure in the lung blood vessels).

(ii) Paradoxical embolization (passage of air or an occluding device beyond the fistula/malformation and into the arterial circulation) causing blockage of blood flow to tissues supplied by the receiving artery and damage to tissues served (for example the blood vessels supplying the heart (which could cause chest pain and/or heart attack) or brain (which could cause stroke, paralysis (inability to move) or other neurological injury)).

(F) For varicocele embolization, these risks in addition to those under subparagraph (A) of this paragraph:

(i) Phlebitis/inflammation of veins draining the testicles leading to decreased size and possibly decreased function of affected testis and sterility (if both sides performed).

(ii) Nerve injury (thigh numbness or tingling).

(G) For ovarian vein embolization/pelvic congestion syndrome embolization: general angiography and embolization risks as listed in subparagraph (A) of this paragraph.

(H) For cases utilizing ethanol (alcohol) injection, in addition to the risks under subparagraph (A) of this paragraph: shock or severe lowering of blood pressure (when more than small volumes are utilized).

(I) For varicose vein treatments (with angiography) see paragraph (12) of this subsection.

(7) Mesenteric angiography with infusional therapy (Vasopressin) for gastrointestinal bleeding.

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(B) Hemorrhage (severe bleeding).

(C) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part).

(D) Worsening of the condition for which the procedure is being done.

(E) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(F) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(G) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities).

(H) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(8) Inferior vena caval filter insertion and removal.

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(B) Hemorrhage (severe bleeding).

(C) Worsening of the condition for which the procedure is being done.

(D) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(E) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere including caval thrombosis (clotting of main vein in abdomen and episodes of swelling of legs).

(F) Injury to the inferior vena cava (main vein in abdomen).

(G) Filter migration or fracture (filter could break and/or move from where it was placed).

(H) Risk of recurrent pulmonary embolus (continued risk of blood clots going to blood vessels in lungs despite filter).

(I) Inability to remove filter (for "optional"/retrievable filters).

(9) Pulmonary angiography.

(A) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(B) Hemorrhage (severe bleeding).

(C) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part).

(D) Worsening of the condition for which the procedure is being done.

(E) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(F) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(G) Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating).

(H) Cardiac injury/perforation (heart injury).

(I) Death.

(10) Percutaneous treatment of pseudoaneurysm (percutaneous thrombin injection through the skin versus compression).

(A) Thrombosis (clotting) of supplying vessel or branches in its territory.

(B) Allergic reaction to thrombin (agent used for direct injection).

(11) Vascular access - nontunneled catheters, tunneled catheters, implanted access.

(A) Pneumothorax (collapsed lung).

(B) Injury to blood vessel.

(C) Hemothorax/hemomediastinum (bleeding into the chest around the lungs or around the heart).

(D) Air embolism (passage of air into blood vessel and possibly to the heart and/or blood vessels entering the lungs).

(E) Vessel thrombosis (clotting of blood vessel).

(12) Varicose vein treatment (percutaneous (through the skin), via laser, radiofrequency ablation (RFA), chemical or other method) without angiography.

(A) Burns.

(B) Deep vein thrombosis (blood clots in deep veins).

(C) Hyperpigmentation (darkening of skin).

(D) Skin wound (ulcer).

(E) Telangiectatic matting (appearance of tiny blood vessels in treated area).

(F) Paresthesia and dysesthesia (numbness or tingling in the area or limb treated).

(G) Injury to blood vessel requiring additional procedure to treat.

§602.7. Female Genital System Treatments and Procedures.

(a) Hysterectomy (abdominal and vaginal).

(1) Uncontrollable leakage of urine.

(2) Injury to bladder.

(3) Injury to the tube (ureter) between the kidney and the bladder.

(4) Injury to the bowel and/or intestinal obstruction.

(5) Need to covert to abdominal incision.

(6) If laparoscopic surgery is utilized, include the following risks:

(A) Damage during introduction of trocar to adjacent intra-abdominal structures and organs (e.g., bowel, bladder, blood vessels, or nerves) and potential need for additional surgery.

(B) Trocar site complications (e.g., hematoma, bleeding, leakage of fluid, or hernia formation).

(C) Air embolus (bubble causing heart failure or stroke).

(D) Change during the procedure to an open procedure.

(E) If cancer is present, may increase the risk of the spread of cancer.

(b) All fallopian tube and ovarian surgery with or without hysterectomy, including removal and lysis of adhesions.

(1) Injury to the bowel and/or bladder.

(2) Sterility.

(3) Failure to obtain fertility (if applicable).

(4) Failure to obtain sterility (if applicable).

(5) Loss of ovarian functions or hormone production from ovary(ies).

(6) If performed with hysterectomy, all associated risks under subsection (a) of this section.

(7) For fallopian tube occlusion (for sterilization with or without hysterectomy), see subsection (n) of this section.

(c) Removing fibroids (uterine myomectomy).

(1) Injury to bladder.

(2) Sterility.

(3) Injury to the tube (ureter) between the kidney and the bladder.

(4) Injury to the bowel and/or intestinal obstruction.

(5) May need to convert to hysterectomy.

(6) If laparoscopic surgery is utilized, include the following risks:

(A) Damage during introduction of trocar to adjacent intra-abdominal structures and organs (e.g., bowel, bladder, blood vessels, or nerves) and potential need for additional surgery.

(B) Trocar site complications (e.g., hematoma, bleeding, leakage of fluid, or hernia formation).

(C) Air embolus (bubble causing heart failure or stroke).

(D) Change during the procedure to an open procedure.

(E) If cancer is present, may increase the risk of the spread of cancer.

(d) Uterine suspension.

(1) Uncontrollable leakage of urine.

(2) Injury to bladder.

(3) Injury to the tube (ureter) between the kidney and the bladder.

(4) Injury to the bowel and/or intestinal obstruction.

(e) Removal of the nerves to the uterus (presacral neurectomy).

(1) Uncontrollable leakage of urine.

(2) Injury to bladder.

(3) Injury to the tube (ureter) between the kidney and the bladder.

(4) Injury to the bowel and/or intestinal obstruction.

(5) Hemorrhage (severe bleeding).

(f) Removal of the cervix.

(1) Uncontrollable leakage of urine.

(2) Injury to bladder.

(3) Sterility.

(4) Injury to the tube (ureter) between the kidney and the bladder.

(5) Injury to the bowel and/or intestinal obstruction.

(6) Need to convert to abdominal incision.

(g) Repair of vaginal hernia (anterior and/or posterior colporrhaphy and/or enterocele repair).

(1) Uncontrollable leakage of urine.

(2) Injury to bladder.

(3) Sterility.

(4) Injury to the tube (ureter) between the kidney and the bladder.

(5) Injury to the bowel and/or intestinal obstruction.

(6) Mesh erosion (with damage to vagina and adjacent tissue).

(h) Abdominal suspension of the bladder (retropubic urethropexy).

(1) Uncontrollable leakage of urine.

(2) Injury to bladder.

(3) Injury to the tube (ureter) between the kidney and the bladder.

(4) Injury to the bowel and/or intestinal obstruction.

(i) Conization of cervix.

(1) Hemorrhage (severe bleeding) which may result in hysterectomy.

(2) Sterility.

(3) Injury to bladder.

(4) Injury to rectum.

(j) Dilation and curettage of uterus (diagnostic/therapeutic).

(1) Possible hysterectomy.

(2) Perforation (hole) created in the uterus.

(3) Sterility.

(4) Injury to bowel and/or bladder.

(5) Abdominal incision and operation to correct injury.

(k) Surgical abortion/dilation and curettage/dilation and evacuation.

(1) Possible hysterectomy.

(2) Perforation (hole) created in the uterus.

(3) Sterility.

(4) Injury to the bowel and/or bladder.

(5) Abdominal incision and operation to correct injury.

(6) Failure to remove all products of conception.

(l) Medical abortion/non-surgical.

(1) Hemorrhage with possible need for surgical intervention.

(2) Failure to remove all products of conception.

(3) Sterility.

(m) Selective salpingography and tubal reconstruction.

(1) Perforation (hole) created in the uterus or Fallopian tube.

(2) Future ectopic pregnancy (pregnancy outside of the uterus).

(3) Pelvic infection.

(n) Fallopian tube occlusion (for sterilization with or without hysterectomy).

(1) Perforation (hole) created in the uterus or Fallopian tube.

(2) Future ectopic pregnancy (pregnancy outside of the uterus).

(3) Pelvic infection.

(4) Failure to obtain sterility.

(o) Hysteroscopy.

(1) Perforation (hole) created in the uterus.

(2) Fluid overload/electrolyte imbalance.

(3) Possible hysterectomy.

(4) Abdominal incision to correct injury.

§602.8. Hematic and Lymphatic System Treatments and Procedures.

(a) Transfusion of blood and blood components.

(1) Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.

(2) Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.

(3) Severe allergic reaction, potentially fatal.

(b) Splenectomy.

(1) Susceptibility to infections and increased severity of infections.

(2) Increased immunization requirements.

§602.15. Respiratory System Treatments and Procedures.

(a) Biopsy and/or excision (removal) of lesion of larynx, vocal cords, trachea.

(1) Loss or change of voice.

(2) Swallowing or breathing difficulties.

(3) Perforation (hole) or fistula (connection) in esophagus (tube from throat to stomach).

(b) Rhinoplasty (surgery to change the shape of the nose) or nasal reconstruction with or without nasal septoplasty (surgical procedure to remove blockage in or straighten the bone and cartilage dividing the space between the two nostrils).

(1) Deformity of skin, bone or cartilage.

(2) Creation of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.

(c) Submucous resection of nasal septum or nasal septoplasty (surgery to remove blockage in or straighten the bone and cartilage dividing the space between the two nostrils).

(1) Persistence, recurrence or worsening of the obstruction.

(2) Perforation of nasal septum (hole in the bone and/or cartilage dividing the space between the right and left halves of the nose) with dryness and crusting.

(3) External deformity of the nose.

(d) Sinus surgery/endoscopic sinus surgery.

(1) Spinal fluid leak.

(2) Visual loss or other eye injury.

(3) Numbness in front teeth and palate (top of mouth).

(4) Loss or reduction in sense of taste or smell.

(5) Recurrence of disease.

(6) Empty Nose Syndrome (sensation of nasal congestion, sensation of not being able to take in adequate air through nose).

(7) Injury to tear duct causing drainage of tears down the cheek.

(8) Brain injury and/or infection.

(9) Injury to nasal septum (the bone and cartilage dividing the space between the two nostrils).

(10) Nasal obstruction.

(e) Lung biopsy (removal of small piece of tissue from inside of lung).

(1) Air leak with pneumothorax (leak of air from lung to inside of chest causing the lung to collapse) with need for insertion of chest tube or repeat surgery.

(2) Hemothorax (blood in the chest around the lung) possibly requiring additional procedures.

(3) Hemoptysis (coughing up blood which can result in trouble breathing and the need to be placed on a ventilator or breathing machine and oxygen).

(f) Segmental resection of lung (removal of a portion of a lung).

(1) Hemothorax (blood in the chest around the lung).

(2) Abscess (infected fluid collection) in chest.

(3) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery.

(4) Need for additional surgery.

(g) Thoracotomy (surgery to reach the inside of the chest).

(1) Hemothorax (blood in the chest around the lung).

(2) Abscess (infected fluid collection) in chest.

(3) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery.

(4) Need for additional surgery.

(h) VATS - video-assisted thoracoscopic surgery (camera-assisted surgery to reach the inside of the chest through small incisions).

(1) Hemothorax (blood in the chest around the lung).

(2) Abscess (infected fluid collection) in chest.

(3) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery.

(4) Need for additional surgery.

(5) Need to convert to open surgery.

(i) Percutaneous (puncture through the skin instead of incision) or Open (surgical incision) tracheostomy.

(1) Loss of voice.

(2) Breathing difficulties.

(3) Pneumothorax (collapsed lung) with need for insertion of chest tube.

(4) Hemothorax (blood in the chest around the lung).

(5) Scarring in trachea (windpipe).

(6) Fistula (connection) between trachea into esophagus (tube from throat to stomach) or great vessels.

(7) Bronchospasm (constriction of the airways leading to trouble breathing).

(8) Hemoptysis (coughing up blood which can result in trouble breathing and the need to be placed on a ventilator or breathing machine and oxygen).

(j) Bronchoscopy (insertion of a camera into the airways of the neck and chest).

(1) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).

(2) Pneumothorax (collapsed lung) with need for insertion of chest tube.

(3) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(4) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(5) Bronchospasm (constriction of the airways leading to trouble breathing).

(6) Hemoptysis (coughing up blood which can result in trouble breathing and the need to be placed on a ventilator or breathing machine and oxygen).

(k) Endobronchial valve placement (device inserted into airways in the lung that controls air movement into and out of abnormal portions of a lung).

(1) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).

(2) Pneumothorax (collapsed lung) with need for insertion of chest tube.

(3) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(4) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(5) Migration (movement) of the stent from its original position.

(6) Airway blockage, potentially life threatening.

(7) Stent blockage.

(8) Worsening of chronic obstructive pulmonary disease (worsening of emphysema).

(9) Respiratory failure (need for breathing tube placement with ventilator support).

(10) Bronchospasm (constriction of the airways leading to trouble breathing).

(11) Hemoptysis (coughing up blood which can result in trouble breathing and the need to be placed on a ventilator or breathing machine and oxygen).

(12) Recurrent infections.

(l) Endobronchial balloon dilatation with or without stent placement (placement of tube to keep airway open).

(1) Bronchial rupture (tearing of the airway) with need for additional surgery.

(2) Pneumothorax (collapsed lung) with need for insertion of chest tube.

(3) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(4) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(5) Migration (movement) of the stent from its original position.

(6) Airway blockage, potentially life threatening.

(7) Stent blockage.

(8) Stent fracture (broken stent).

(9) Recurrent infections.

(10) Stent erosion into adjacent structures (stent wears a hole through the airway and injures nearby tissues).

(11) Hemoptysis (coughing up blood which can result in respiratory distress and the need to be placed on a ventilator or breathing machine and oxygen).

(m) Mediastinoscopy (insertion of a camera into the space behind the breastbone and between the lungs) with or without biopsy (removal of tissue).

(1) Hemorrhage (severe bleeding) requiring open surgery.

(2) Nerve injury causing vocal cord paralysis or poor function.

(3) Pneumothorax (collapsed lung).

(4) Tracheal injury (damage to the airway/windpipe).

(n) Pleurodesis (procedure to prevent fluid build-up in space between the lung and chest wall).

(1) Respiratory failure (need for breathing tube placement).

(2) Empyema (infection/pus in the space around the lung).

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

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CHAPTER 603. PROCEDURES REQUIRING NO DISCLOSURE OF SPECIFIC RISKS AND HAZARDS--LIST B

25 TAC §§603.1 - 603.21

The Texas Medical Disclosure Panel (Panel) adopts new Texas Administrative Code (TAC), Title 25, Part 7, Chapter 603, concerning Procedures Requiring No Disclosure Of Specific Risks And Hazards--List B. The new chapter consists of §§603.1 - 603.21.

New §§603.1 - 603.21 are adopted without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4109). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

These rule repeals and new rules are adopted in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

This project repeals current 25 TAC Chapter 601, Informed Consent, and replaces it in a nonsubstantive manner with multiple chapters in order to make the Panel's determinations regarding risks and hazards related to medical care and surgical procedures more accessible to the public and more user-friendly.

The new Chapter 601 contains the purpose and history of the rules at 25 TAC Part 7, Texas Medical Disclosure Panel. These new rules appear elsewhere in this issue of the *Texas Register.*

The new Chapter 602 lists each type of treatment and procedure that the Panel has determined requires full disclosure of the risks and hazards associated with it in a separate section, instead of in a single section at the repealed §601.2. These new rules appear elsewhere in this issue of the *Texas Register.*

The new Chapter 603 lists each type of treatment and procedure that the Panel has determined requires no disclosure of the risks and hazards associated with it in a separate section, instead of in a single section at the repealed §601.3.

The new Chapter 604 contains general, radiation therapy, electroconvulsive therapy, hysterectomy, and anesthesia and/or perioperative pain management disclosure and consent forms. These new rules appear elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

The new §603.1, Anesthesia treatments and procedures, lists the anesthesia treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.2, Cardiovascular system treatments and procedures, lists the cardiovascular system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.3, Digestive system treatments and procedures, lists the digestive system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.4, Ear treatments and procedures, lists the ear treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.5, Endocrine system treatments and procedures, lists the endocrine system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.6, Eye treatments and procedures, lists the eye treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.7, Female genital system treatments and procedures, lists the female genital system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.8, Hematic and lymphatic system treatments and procedures, lists the hematic and lymphatic system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.9, Breast surgery (non-cosmetic) treatments and procedures, lists the breast surgery (non-cosmetic) treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.10, Male genital system treatments and procedures, lists the male genital system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.11, Maternity and related cases treatments and procedures, lists the maternity and related cases treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.12, Musculoskeletal system treatments and procedures, lists the musculoskeletal system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.13, Nervous system treatments and procedures, lists the nervous system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.14, Radiology treatments and procedures, lists the radiology treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.15, Respiratory system treatments and procedures, lists the respiratory system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.16, Urinary system treatments and procedures, lists the urinary system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.17, Psychiatric treatments and procedures, lists the psychiatric treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.18, Radiation treatments and procedures, lists the radiation treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.19, Laparoscopic/Thoracoscopic surgery treatments and procedures, lists the laparoscopic/thoracoscopic surgery treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.20, Pain management treatments and procedures, lists the pain management treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

The new §603.21, Plastic surgery and surgery of the integumentary system treatments and procedures, lists the plastic surgery and surgery of the integumentary system treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with them.

PUBLIC COMMENT

The 31-day public comment period ended August 28, 2023.

During this period, the Panel received comments from two commenters, representing the Texas Medical Association (TMA) and the Texas Society of Anesthesiologists (TSA). A summary of the comments and the Panel's responses follow.

Comment: The TMA thanked the Panel for its work on the revisions and recommended nonsubstantive changes to correct typographical and citation errors in new Chapters 602 and 604.

Response: The Panel acknowledges the comment and addresses the changes in Chapters 602 and 604 published elsewhere in this issue of the *Texas Register*.

Comment: The TSA thanked the Panel and said it supports the efforts to convey the purpose of the Panel clearly and effectively to the public. TSA participated in the review process and supports the version of the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia) adopted by the Panel in April 2023.

Response: The Panel acknowledges the comment.

STATUTORY AUTHORITY

The new sections are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

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

Filed with the Office of the Secretary of State on December 6, 2023.

TRD-202304586
Dr. Noah Appel
Panel Chairman
Texas Medical Disclosure Panel
Effective date: December 26, 2023
Proposal publication date: July 28, 2023
For further information, please call: (512) 438-2889

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CHAPTER 604. DISCLOSURE FORMS

25 TAC §§604.1 - 604.5

The Texas Medical Disclosure Panel (Panel) adopts new Texas Administrative Code (TAC), Title 25, Part 7, Chapter 604, concerning Disclosure Forms. The new chapter consists of §§604.1 - 604.5.

New §604.2 is adopted with changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4113). This rule will be republished.

New §§604.1, and 604.3 - 604.5 are adopted without changes to the proposed text as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4113). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

These rule repeals and new rules are adopted in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

This project repeals current 25 TAC Chapter 601, Informed Consent, and replaces it in a nonsubstantive manner with multiple chapters in order to make the Panel's determinations regarding risks and hazards related to medical care and surgical procedures more accessible to the public and more user-friendly.

The new Chapter 601 contains the purpose and history of the rules at 25 TAC Part 7, Texas Medical Disclosure Panel. These new rules appear elsewhere in this issue of the *Texas Register.*

The new Chapter 602 lists each type of treatment and procedure that the Panel has determined requires full disclosure of the risks and hazards associated with it in a separate section, instead of in a single section at the repealed §601.2. These new rules appear elsewhere in this issue of the *Texas Register.*

The new Chapter 603 lists each type of treatment and procedure that the Panel has determined requires no disclosure of the risks and hazards associated with it in a separate section, instead of in a single section at the repealed §601.3. These new rules appear elsewhere in this issue of the *Texas Register*.

The new Chapter 604 contains general, radiation therapy, electroconvulsive therapy, hysterectomy, and anesthesia and/or perioperative pain management disclosure and consent forms.

SECTION-BY-SECTION SUMMARY

The new §604.1, Disclosure and Consent Form, lists the disclosure and consent forms that the Panel has determined are required to disclose risks and hazards associated with the procedures listed in Chapters 602 and 603.

The new §604.2, Disclosure and Consent Form for Radiation Therapy, lists the disclosure and/or consent forms that the Panel has determined are required to disclose risks and hazards associated with radiation therapy procedures.

The new §604.3, Informed Consent for Electroconvulsive Therapy, sets out disclosure requirements and options for electroconvulsive therapy.

The new §604.4, Disclosure and Consent Form for Hysterectomy, lists the disclosure and/or consent forms that the Panel has determined are required to disclose risks and hazards associated with hysterectomy procedures.

The new §604.5, Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia), lists the disclosure and/or consent forms that the Panel has determined are required to disclose risks and hazards associated with anesthesia and/or perioperative pain management (analgesia) procedures.

PUBLIC COMMENT

The 31-day public comment period ended August 28, 2023.

During this period, the Panel received comments from two commenters, representing the Texas Medical Association (TMA) and the Texas Society of Anesthesiologists (TSA). A summary of the comments and the Panel's responses follow.

Comment: The TMA thanked the Panel for its work on the revisions and recommended nonsubstantive changes to correct typographical and citation errors in new Chapters 602 and recommended deleting the phrase "or early and late reactions" on page 2 of the Disclosure and Consent Form for Radiation Therapy under proposed §604.2.

Response: The Panel revises page 2 of the form to read "risk of early and late reactions" (instead of "risk or early and late reactions") for clarity and addresses the Chapter 602 suggestions published elsewhere in this issue of the *Texas Register.*

Comment: The TSA thanked the Panel and said it supports the efforts to convey the purpose of the Panel clearly and effectively to the public. TSA participated in the review process and supports the version of the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia) adopted by the Panel in April 2023.

Response: The Panel acknowledges the comment.

STATUTORY AUTHORITY

The new sections are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

§604.2. Disclosure and Consent Form for Radiation Therapy.

The Texas Medical Disclosure Panel adopts the following form to be used by a physician or health care provider to inform a patient or person authorized to consent for a patient of the possible risks and hazards involved in the radiation therapy named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §604.1(a) of this chapter (relating to Disclosure and Consent Form) for disclosure and consent relating to only radiation therapy procedures. If a surgical or anesthetic procedure is required in combination with a radiation therapy procedure, the general disclosure and consent form as adopted in §604.1(a) of this chapter and the form adopted in this section shall be used. The general disclosure and consent form shall be used for the surgical or anesthetic procedure and the radiation therapy disclosure and consent form shall be used for the radiation therapy procedure. Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Health and Human Services Commission.

(1) English form.

Figure: 25 TAC §604.2(1)

(2) Spanish form.

Figure: 25 TAC §604.2(2)

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

Filed with the Office of the Secretary of State on December 6, 2023.

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Dr. Noah Appel
Panel Chairman
Texas Medical Disclosure Panel
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For further information, please call: (512) 438-2889

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The commissioner of the Texas Department of Insurance (TDI) adopts amended 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. The amendment is adopted without changes to the proposed text published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5810) and will not be republished.

REASONED JUSTIFICATION. An amendment is necessary to comply with Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC) Under Insurance Code §425.073, the commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the commissioner to determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016. On August 16, 2023, the NAIC voted to adopt changes to the valuation manual. Fifty jurisdictions, representing jurisdictions totaling 89.48% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The vote adopting changes to the NAIC valuation manual meets the requirements of Insurance Code §425.073(c).

In addition to clarifying existing provisions, the 2024 valuation manual includes changes that:

- require reporting on actuarial items, including company inflation assumptions;

- revise required hedge modeling for index credit hedging, a fundamentally different type of hedging from the type of hedging that existing requirements were designed to reflect; and

- update the required timing for companies to submit mortality experience data to allow for more timely creation of industry mortality tables.

The NAIC's adopted changes to the valuation manual can be viewed at https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_redline.pdf. Effective January 1, 2024, the adopted manual can be viewed at the following website: https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition.pdf.

The proposed amendments to the sections are described in the following paragraph.

Section 3.9901. The amendment to §3.9901 strikes the date on which the NAIC adopted its previous valuation manual and inserting the date on which the NAIC adopted its current valuation manual, changing it from August 13, 2022, to August 16, 2023.

This proposal includes provisions related to NAIC rules, regulations, directives, or standards, and, under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt it. In addition, under Insurance Code §36.007, an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas Legislature. TDI has determined that neither Insurance Code §36.004 nor §36.007 prohibit the proposed rule because §425.073 requires the commissioner to adopt a manual that is substantially similar to the NAIC manual.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendment.

STATUTORY AUTHORITY. The commissioner adopts the amendment to §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by the NAIC, and it provides that after a valuation manual has been adopted by the commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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

TRD-202304675
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: December 31, 2023
Proposal publication date: October 6, 2023
For further information, please call: (512) 676-6555

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER F. INLAND MARINE INSURANCE, MULTI-PERIL INSURANCE, AND COMMERCIAL LINES

DIVISION 3. EXEMPT COMMERCIAL LINES

28 TAC §5.5201

The commissioner of insurance adopts new 28 TAC §5.5201, concerning exempt commercial lines of property and casualty insurance. The new section is adopted without changes to the proposed text published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5812) and will not be republished.

REASONED JUSTIFICATION. New 28 TAC §5.5201 is necessary to implement Senate Bill 1367, 87th Legislature, 2021, which exempts certain commercial lines of insurance from rate and form filing requirements. SB 1367 authorizes the commissioner to exempt additional commercial lines of insurance to promote enhanced competition or more effectively use TDI resources that might otherwise be used to review commercial lines filings.

New §5.5201 identifies 12 additional commercial lines of property and casualty insurance and exempts them from the rate and form filing requirements in Insurance Code Chapter 2251, Subchapter C, and Insurance Code Chapter 2301, Subchapter A. The rule does not exempt these insurance lines from any other applicable statute or rule.

These lines are appropriate to exempt because TDI receives comparatively few rate and form filings or policyholder complaints involving them. These factors indicate that there is less need for TDI to review forms and rates for these lines. Further, exempting these lines of insurance will promote enhanced competition and allow TDI to more effectively use its resources to review other commercial lines filings, as contemplated by SB 1367.

The title of Subchapter F is amended to reflect that a section in it addresses commercial lines and adds new Division 3 to address exempt commercial lines.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed new section.

STATUTORY AUTHORITY. The commissioner adopts new §5.5201 under §§2251.0031, 2301.0031, 36.001, and 36.002.

Insurance Code §2251.0031 exempts certain lines of insurance from rate filing requirements and provides that the commissioner may by rule exempt additional commercial lines of insurance to promote enhanced competition or more effectively use TDI resources. Section 2251.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2251.0031.

Insurance Code §2301.0031 exempts certain lines of insurance from form filing requirements and provides that the commissioner may by rule exempt additional commercial lines of insurance to promote enhanced competition or more effectively use TDI resources. Section 2301.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2301.0031.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are necessary to effect the purposes of Insurance Code Chapter 2251 and Chapter 2301, Subchapter A.

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

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

TRD-202304664
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: December 31, 2023
Proposal publication date: October 6, 2023
For further information, please call: (512) 676-6555

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §§133.240, 133.250, 133.305, and 133.308, concerning medical disputes for workers' compensation claims. The amendments are adopted without changes to the proposed text published in the November 3, 2023, issue of the *Texas Register* (48 TexReg 6451). The text will not be republished.

REASONED JUSTIFICATION. House Bill (HB) 90 added Labor Code §§401.027, 501.027, 501.028, and 501.029; and amended Labor Code §501.001. The amendments to §§133.240, 133.250, 133.305, and 133.308 are necessary to implement the changes in HB 90 by clarifying workers' compensation coverage for authorized travel by members of the Texas military forces, ensuring that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, and ensuring that DWC expedites medical disputes about those claims. The amendments also include an update to the agency's address and nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Section 133.240. The amendments to §133.240 correct typos in existing text and add the requirement from HB 90 that an insurance carrier must accelerate and give priority to a qualifying claim for medical benefits by a member of the Texas military forces, including all required health care for the claim. Amending §133.240 is necessary to ensure that the rule is consistent with HB 90.

Section 133.250. The amendments to §133.250 correct typos in existing text and add the requirement from HB 90 that an insurance carrier must accelerate and give priority to a qualifying claim for medical benefits by a member of the Texas military forces, including all required health care for the claim. Amending §133.250 is necessary to ensure that the rule is consistent with HB 90.

Section 133.305. The amendments to §133.305 add references to the definitions in Government Code §437.001 for "state active duty," "state training and other duty," and "Texas military forces." The amendments also add the requirement from HB 90 that, for a claim under Labor Code §501.028, the travel of a member of the Texas military forces to or from the member's duty location is considered to be in the course and scope of the member's employment if the member is serving on state active duty and engaged in authorized duty under written orders, or is on state training and other duty. Amending §133.305 is necessary to ensure that the rule is consistent with HB 90.

Section 133.308. The amendments to §133.308 update the address for the Managed Care Quality Assurance (MCQA) Office at the Texas Department of Insurance. The amendments also add the requirement from HB 90 that DWC will accelerate and give priority to an appeal from a denial of a qualifying claim for medical benefits made by a member of the Texas military forces, as well as to actions involving all health care required to cure or relieve the effects naturally resulting from a compensable injury. The amendments add the requirement from HB 90 that the member must notify DWC and the independent review officer that the contested case hearing or appeal involves a member of the Texas military forces. Amending §133.308 is necessary to ensure that the rule contains the current MCQA office address and that it is consistent with HB 90.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment, and no oral comments. The commenter in support of the proposal was the Office of Injured Employee Counsel.

SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

28 TAC §133.240, §133.250

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to §§133.240 and 133.250 under Labor Code §§401.027, 501.001, 501.027, 501.028, 501.029, 402.00111, 402.00116, and 402.061.

Labor Code §401.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the travel of a member of the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Labor Code §501.001, as amended by HB 90, 88th Legislature, Regular Session (2023), defines "post-traumatic stress disorder," as well as "state active duty" and "Texas military forces."

Labor Code §501.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides requirements for coverage for post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty as a compensable injury.

Labor Code §501.028, as added by HB 90, 88th Legislature, Regular Session (2023), requires an insurance carrier to accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which §501.028 applies. This includes all health care required to cure or relieve the effects naturally resulting from a compensable injury, defined as a serious bodily injury, as defined by Penal Code §1.07, sustained by a member of the Texas military forces while on state active duty. Section 501.028 requires DWC to accelerate, under rules adopted by the DWC commissioner, a contested case hearing requested by, or an appeal submitted by, a member of the Texas military forces to which §501.028 applies, about the denial of such a claim. Section 501.028 also requires the member to notify DWC and an independent review organization that the contested case or appeal involves a member of the Texas military forces.

Labor Code §501.029, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the purpose of §501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which §501.029 applies is accelerated by an insurance carrier to the full extent authorized by current law.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on December 8, 2023.

TRD-202304606
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: December 28, 2023
Proposal publication date: November 3, 2023
For further information, please call: (512) 804-4703

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SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.305, §133.308

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to §§133.305 and 133.308 under Labor Code §§401.027, 501.001, 501.027, 501.028, 501.029, 402.00111, 402.00116, and 402.061.

Labor Code §401.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the travel of a member of the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Labor Code §501.001, as amended by HB 90, 88th Legislature, Regular Session (2023), defines "post-traumatic stress disorder," as well as "state active duty" and "Texas military forces."

Labor Code §501.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides requirements for coverage for post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty as a compensable injury.

Labor Code §501.028, as added by HB 90, 88th Legislature, Regular Session (2023), requires an insurance carrier to accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which §501.028 applies. This includes all health care required to cure or relieve the effects naturally resulting from a compensable injury, defined as a serious bodily injury, as defined by Penal Code §1.07, sustained by a member of the Texas military forces while on state active duty. Section 501.028 requires DWC to accelerate, under rules adopted by the DWC commissioner, a contested case hearing requested by, or an appeal submitted by, a member of the Texas military forces to which §501.028 applies, about the denial of such a claim. Section 501.028 also requires the member to notify DWC and an independent review organization that the contested case or appeal involves a member of the Texas military forces.

Labor Code §501.029, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the purpose of §501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which §501.029 applies is accelerated by an insurance carrier to the full extent authorized by current law.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

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Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

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CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.600

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §134.600, concerning preauthorization, concurrent utilization review, and voluntary certification of health care. The amendments are adopted without changes to the proposed text published in the November 3, 2023, issue of the *Texas Register* (48 TexReg 6455). The text will not be republished.

REASONED JUSTIFICATION. House Bill (HB) 90 added Labor Code §§401.027, 501.027, 501.028, and 501.029; and amended Labor Code §501.001. The amendments to §134.600 are necessary to implement the changes in HB 90 by ensuring that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, including all health care required for the compensable injury. The amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Section 134.600. The amendments to §134.600 correct typos in existing text and add the requirement from HB 90 that an insurance carrier must accelerate and give priority to a qualifying claim for medical benefits by a member of the Texas military forces, including all required health care for the claim. Amending §134.600 is necessary to ensure that the rule is consistent with HB 90.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment, and no oral comments. The commenter in support of the proposal was the Office of Injured Employee Counsel.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §134.600 under Labor Code §§401.027, 501.001, 501.027, 501.028, 501.029, 402.00111, 402.00116, and 402.061.

Labor Code §401.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the travel of a member of the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Labor Code §501.001, as amended by HB 90, 88th Legislature, Regular Session (2023), defines "post-traumatic stress disorder," as well as "state active duty" and "Texas military forces."

Labor Code §501.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides requirements for coverage for post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty as a compensable injury.

Labor Code §501.028, as added by HB 90, 88th Legislature, Regular Session (2023), requires an insurance carrier to accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which §501.028 applies. This includes all health care required to cure or relieve the effects naturally resulting from a compensable injury, defined as a serious bodily injury, as defined by Penal Code §1.07, sustained by a member of the Texas military forces while on state active duty. Section 501.028 requires DWC to accelerate, under rules adopted by the DWC commissioner, a contested case hearing requested by, or an appeal submitted by, a member of the Texas military forces to which §501.028 applies, about the denial of such a claim. Section 501.028 also requires the member to notify DWC and an independent review organization that the contested case or appeal involves a member of the Texas military forces.

Labor Code §501.029, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the purpose of §501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which §501.029 applies is accelerated by an insurance carrier to the full extent authorized by current law.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

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Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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Proposal publication date: November 3, 2023
For further information, please call: (512) 804-4703

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

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Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 375, Refugee Cash Assistance and Medical Assistance Programs

Subchapter A Program Purpose and Scope

Subchapter B Contractor Requirements for The Refugee Cash Assistance Program (RCA)

Subchapter C Program Administration for The Refugee Cash Assistance Program (RCA)

Subchapter D Refugee Cash Assistance Participant Requirements

Subchapter E Refugee Medical Assistance

Subchapter F Modified Adjusted Gross Income Methodology

Subchapter G Local Resettlement Agency Requirements

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 375, Refugee Cash Assistance and Medical Assistance Programs, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 375" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the chapter being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304706
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: December 13, 2023

♦ ♦ ♦

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 103, Health and Safety, Subchapter AA, Commissioner's Rules Concerning Physical Fitness; Subchapter BB, Commissioner's Rules Concerning General Provisions for Health and Safety; Subchapter CC, Commissioner's Rules Concerning Safe Schools; and Subchapter DD, Commissioner's Rules Concerning Video Surveillance of Certain Special Education Settings, pursuant to Texas Government Code, §2001.039.

As required by Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting Chapter 103, Subchapters AA-DD, continue to exist.

The public comment period on the review begins December 22, 2023, and ends January 29, 2024. A form for submitting public comments on the proposed rule review is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review.

TRD-202304696
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 12, 2023

♦ ♦ ♦

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 73, Laboratories

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 73, Laboratories, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordina-

tionOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 73" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304662
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 11, 2023

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State of Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 146, Training and Certification of Promotores or Community Health Workers

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 146, Training and Certification of Promotores or Community Health Workers, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 146" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304663
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 11, 2023

♦ ♦ ♦

Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 302, IDD-BH Training

Subchapter A Mental Health First Aid

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 302, IDD-BH Training, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 302" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304591
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission
Filed: December 7, 2023

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 363, County Indigent Health Care Program

Subchapter A Program Administration

Subchapter B Determining Eligibility

Subchapter C Providing Services

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 363, County Indigent Health Care Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 363" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304653
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission
Filed: December 11, 2023

♦ ♦ ♦

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 Texas Administrative Code (TAC) Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, pursuant to Texas Government Code, §2001.039. The rules reviewed by the SBOE in 19 TAC Chapter 33 relate to investments and are organized under the following subchapters: Subchapter A, State Board of Education Rules, and Subchapter B, Texas Permanent School Fund Corporation Rules.

The SBOE proposed the review of 19 TAC Chapter 33, Subchapters A and B, in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5827).

Relating to the review of 19 TAC Chapter 33, Subchapters A and B, the SBOE finds that the reasons for adopting Subchapters A and B continue to exist and readopts the rules. The SBOE approved for first reading and filing authorization the proposed amendment to 19 TAC Chapter 33, Subchapter A, §33.2, Distributions to the Available School Fund, which can be found in the Proposed Rules section of this issue.

The SBOE received no comments related to the review of Subchapters A and B.

This concludes the review of Chapter 33.

TRD-202304587
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 6, 2023

♦ ♦ ♦

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 296, Texas Asbestos Health Protection

Subchapter A General Provisions

Subchapter B Definitions

Subchapter C Standards of Conduct

Subchapter D License and Registration

Subchapter E Training Provider License and Training Courses

Subchapter F License and Registration Fees

Subchapter G State Licensing Examination

Subchapter H License and Registration Provisions Related to Military Service Members, Military Veterans, and Military Spouses

Subchapter I Accreditation

Subchapter J Exemptions

Subchapter K Asbestos Management in a Public Building, Commercial Building, or Facility

Subchapter L General Requirements, and Practices and Procedures for Asbestos Abatement in a Public Building

Subchapter M Alternative Asbestos Practices and Procedures in a Public Building

Subchapter N Notifications

Subchapter O Inspections and Investigations

Subchapter P Recordkeeping

Subchapter Q Compliance

Notice of the review of this chapter was published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5988). HHSC and DSHS received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 296 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 296. Any amendments or repeals to Chapter 296 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 296 as required by the Texas Government Code, §2001.039.

TRD-202304601
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 8, 2023

♦ ♦ ♦

Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 331, LIDDA Service Coordination

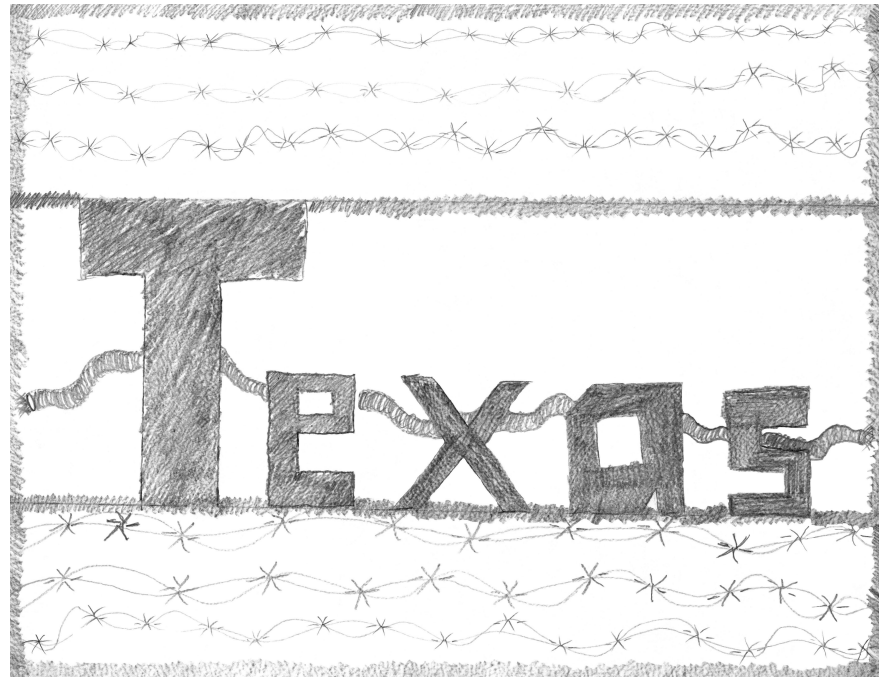
Notice of the review of this chapter was published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6397). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 331 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 331. Any amendments or repeals to Chapter 331 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 331 as required by the Texas Government Code, §2001.039.

TRD-202304643
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission
Filed: December 11, 2023

♦ ♦ ♦


TEXAS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §11.2(a)

Deadline	Documentation Required
01/02/2024	Application Acceptance Period Begins. Public Comment period starts.
01/05/2024	Pre-Application Final Delivery Date (including waiver requests).
02/15/2024	Deadline for submission of Request for Preliminary Determination in accordance with §11.8(d) of this chapter.
02/15/2024	Deadline for submission of Application for .ftp access if pre-application not submitted.
Deadline	Documentation Required
03/01/2024	End of Application Acceptance Period and Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Scope and Cost Reviews (SCRs); Appraisals; Primary Market Area Map; Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter.
04/04/2024	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/03/2024	Deadline for Third Party Request for Administrative Deficiency.

Early June 2024	Scoring Notices Issued for Majority of Applications Considered “Competitive.”
06/03/2024	Public comment deadline for the comment to be included in the Board materials relating to the July presentation of awards are due in accordance with §1.10.
June 2024	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2024	On or before July 31, Board issuance of Final Awards.
Deadline	Documentation Required
August 2024	Commitments are Issued.
11/01/2024	Carryover Documentation Delivery Date.
07/01/2025	10% Test Documentation Delivery Date.
12/31/2026	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

Figure: 10 TAC §11.1002

Deadline	Documentation Required
3/01/2024	Full Application Delivery Deadline, must include completed Intent to Request a State Housing Tax Credit Allocation
8/31/2024	State Housing Tax Credit Request Form due
September 2024	Allocation Certificates issued

Figure: 25 TAC §604.2(1)

DISCLOSURE AND CONSENT FOR RADIATION THERAPY

TO THE PATIENT: You have the right to be informed about 1) your condition, 2) the recommended radiation therapy procedure to be used to treat your condition, and 3) the risks related to the radiation therapy procedure. This disclosure is designated to provide you this information, so that you can decide whether to consent to receive the recommended procedure. Please ask your physician/healthcare provider any remaining questions you have before signing this form.

Description of Radiation Therapy Procedure(s) risk of early and late reactions

I voluntarily request my physician [name/credentials]

_____ and other health care providers to treat my condition which is:

_____

_____

_____.

I understand that the following radiation therapy procedure(s) are planned for me (specify technique and site):

_____

_____

_____.

I understand that my condition may be treated with external beam radiation therapy alone, with internal radiation implant alone or with both or in planned combination with surgery and/or chemotherapy.

I agree to the taking of photographs or placing of tattoo or skin marks on me if necessary for treatment.

_____.

Risks Related to Radiation Therapy Procedure(s)

Just as there may be risks and hazards to my health without treatment, there are also risks and hazards related to the procedure(s) planned for me. The chances of these occurring may be different for each patient based on the procedure(s) and the patient's current health.

INITIAL ONE:

I understand that radiation can be harmful to the unborn child.

[___] I am [___] I could be [___] I am not pregnant.

[___]**INITIAL IF APPLICABLE:**

I HAVE AN IMPLANTED ELECTRONIC DEVICE (such as a pacemaker, defibrillator or nerve stimulator). I understand radiation to the device can cause malfunction of the device.

I understand that the risks from radiation therapy may occur during or shortly after the course of treatment ("early reactions"), or sometime later ("late reactions"). The risks may be temporary or permanent.

These risks may be made worse if you have received chemotherapy or surgery before, during or after radiation therapy or if you had radiation therapy before to the same area. Risks of early and late reactions which could occur as a result of the procedure(s) are listed below. With few exceptions, these reactions affect only the areas of the body actually receiving the radiation therapy.

Risks for this specific part of the body receiving radiation therapy, which are divided into early and late reactions, include, but are not limited to [**include List A risks here and additional risks if any]:**

_____
_____
_____

Granting of Consent for Radiation Therapy Procedure(s)

By signing below, I consent to the radiation therapy procedure(s) described above. I acknowledge the following:

- I understand this procedure(s) does not guarantee a result of a cure to my condition.
- I have been given an opportunity to ask questions I may have about:
    1. Alternative forms of treatment,
    2. Risks of non-treatment,
    3. Steps that will occur during my procedure(s), and
    4. Risks and hazards involved in the procedure(s).
- I believe I have enough information to give this informed consent.
- I certify this form has been fully explained to me and the blank spaces have been filled in.
- I have read this form or had it read to me.
- I understand the information on this form.

If any of those statements are not true for you, please talk to your physician/health care provider before continuing.

_____

Patient/Other Legally Authorized Representative (signature required):

_____ _____

Print Name Signature

If Legally Authorized Representative, list relationship to Patient:

_____

Date: _____ Time: _____A.M./P.M.

Witness:

_____ _____

Print Name Signature

_____

Address (Street or P.O. Box)

_____

City, State, Zip Code

Figure: 25 TAC §604.2(2)

INFORMACIÓN Y CONSENTIMIENTO
PARA RECIBIR RADIOTERAPIA

AL PACIENTE: Usted tiene el derecho a ser informado sobre 1) su enfermedad, 2) el procedimiento de radioterapia recomendado para tratar su enfermedad y 3) los riesgos relacionados con el procedimiento de radioterapia. La información que aquí presentamos tiene como fin que usted pueda tomar la decisión de dar o no su consentimiento para recibir esta atención o procedimiento médicos. Antes de firmar este formulario, le recomendamos que consulte con su médico o proveedor

Descripción de los procedimientos de radioterapia

De manera voluntaria, solicito a mi médico o proveedor de atención médica [nombre/acreditaciones] _____, así como a otros proveedores de atención médica, que den tratamiento a mi enfermedad que es:

_____

_____

_____.

Entiendo que se han planeado para mí los siguientes procedimientos de radioterapia (especifique la técnica y el lugar):

_____

_____

_____.

Entiendo que mi enfermedad puede ser tratada solo con radioterapia externa, solo con implante, de radiación interna o con ambas, o en combinación con una cirugía o quimioterapia.

Estoy de acuerdo con la toma de fotografías o la colocación de tatuajes o marcas en mi piel si es necesario para el tratamiento.

_____.

Riesgos relacionados con el procedimiento de radioterapia

Al igual que puede haber riesgos y peligros para mi salud si no recibo ningún tratamiento, también existen riesgos y peligros relacionados con el tratamiento o procedimiento que se tiene planeado realizarme. Las probabilidades de que algo de lo anterior ocurra varían en cada persona, ya que dependen de la atención médica o procedimiento y del estado de salud actual del paciente.

PONER SUS INICIALES EN UNA OPCIÓN:

Entiendo que la radiación puede ser perjudicial para el bebé en desarrollo.

[___] Estoy [___] Podría estar [___] No estoy embarazada.

[___] **INICIALES SI CORRESPONDE:**

TENGO UN DISPOSITIVO ELECTRÓNICO IMPLANTADO (como un marcapasos, un desfibrilador o un estimulador neural). Entiendo que la radiación aplicada al dispositivo puede causar un mal funcionamiento del mismo.

Entiendo que los riesgos de la radioterapia pueden ocurrir durante el tratamiento o poco después (reacciones tempranas) o algún tiempo después (reacciones tardías). Los riesgos pueden ser temporales o permanentes.

Estos riesgos pueden empeorar si usted ha recibido quimioterapia o cirugía antes, durante o después de la radioterapia o si ha recibido radioterapia anteriormente en la misma área. A continuación, se enumeran los riesgos de~~o~~ las reacciones tempranas y tardías que podrían producirse como consecuencia del procedimiento o procedimientos. Con pocas excepciones, estas reacciones solo afectan a las áreas del cuerpo que realmente reciben la radioterapia.

Los riesgos para esta parte específica del cuerpo que recibe radioterapia, que se dividen en reacciones tempranas y tardías, incluyen, entre otros [**incluya aquí los riesgos de la Lista A y los riesgos adicionales si los hay**]:

_____
_____
_____

Dar consentimiento para el procedimiento de radioterapia

Mediante mi firma más abajo, doy mi consentimiento para que se me realicen los procedimientos de radioterapia descritos anteriormente. Reconozco lo siguiente:

- Entiendo que estos procedimientos médicos no garantizan la conclusión o la curación de mi enfermedad.
- Se me ha dado la oportunidad de hacer preguntas para aclarar mis posibles dudas sobre:
    1. Tratamientos alternativos
    2. Los riesgos de no recibir ningún tratamiento.
    3. Los pasos que se darán durante los procedimientos médicos o quirúrgicos a los que me someta, y
    4. Los riesgos y peligros que conllevan los procedimientos médicos o quirúrgicos.
- Considero que he recibido suficiente información para dar este consentimiento informado.
- Certifico que se me ha explicado completamente el contenido de este formulario y que sus espacios en blanco han sido llenados.
- He leído este formulario o alguien me lo ha leído.
- Entiendo la información contenida en este formulario.

Si alguna de las declaraciones anteriores no es aplicable a usted, comuníquese con su médico o proveedor de atención médica antes de continuar.

_____

EL PACIENTE/OTRO REPRESENTANTE AUTORIZADO (la firma es obligatoria)

_____

Nombre en letra de molde Firma

Si usted es el representante legalmente autorizado, indique cuál es su relación con el paciente:

_____

FECHA: _____ **HORA**: _____
A.M./P.M.

TESTIGO:

_____

Nombre en letra de molde Firma

Dirección (calle y número o apartado postal)

_____

Ciudad, estado y código postal

Figure: 26 TAC §553.287(e)(3)

Texas Health and Human Services Commission (HHSC)

Information Regarding Authorized Electronic Monitoring

A resident, or the resident's guardian or legally authorized representative, is entitled to conduct authorized electronic monitoring (AEM) under Health and Safety Code §247.003. To request AEM, you, your guardian, or your legally authorized representative, must:

(1) complete the Request for Authorized Electronic Monitoring form (available from the facility);

(2) obtain the consent of other residents, if any, in your room, using the Consent to Authorized Electronic Monitoring form (available from the facility); and

(3) give the form to the facility manager or designee.

Who may request AEM?

(1) The resident, if the resident has capacity to request AEM and has not been judicially declared to lack the required capacity.

(2) The guardian of the resident, if the resident has been judicially declared to lack the required capacity.

(3) The legally authorized representative of the resident if the resident does not have capacity to request AEM and has not been judicially declared to lack the required capacity.

Who determines if the resident does not have the capacity to request AEM?

The resident's practitioner will make the determination regarding the resident's capacity to request AEM. When the resident's practitioner has determined the resident lacks capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legally authorized representative for the limited purpose of requesting AEM:

(1) a person named in the resident's medical power of attorney or another advance directive;

(2) the resident's spouse;

(3) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(4) a majority of the resident's reasonably available adult children;

(5) the resident's parents; or

(6) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

Who must consent to AEM?

(1) Any other resident residing in the room.

(2) The guardian of the other resident, if the resident has been judicially declared to lack the required capacity.

(3) The legally authorized representative of the other resident if the resident does not have capacity to sign the form but has not been judicially declared to lack the required capacity. The legally authorized representative is determined by following the procedure for determining a legally authorized representative, as stated above, under "Who determines if the resident does not have the capacity to request AEM?"

Can a resident be discharged or refused admittance for requesting AEM?

A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct AEM. If either of these situations occur, you should report the occurrence to the local office of Long-term Care Regulation, HHSC.

What about covert electronic monitoring?

A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. A facility attempting to discharge a resident because of covert electronic monitoring should be reported to the local office of Long-term Care Regulation, HHSC.

What is required if a covert electronic monitoring device is discovered?

If a covert electronic monitoring device is discovered by a facility and is no longer covert as defined in §553.3 of this chapter (relating to Definitions), the resident must meet all requirements for AEM before monitoring is allowed to continue.

Is notice of AEM required?

Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that an electronic monitoring device is monitoring the room.

What is required for the installation of monitoring equipment?

The resident, or the resident's guardian or legally authorized representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. A facility may also require that AEM be conducted in plain view.

The facility must make reasonable physical accommodation for AEM, which includes providing:

(1) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) access to power sources for the video surveillance camera or other electronic monitoring device.

If the facility refuses to permit AEM or fails to make reasonable physical accommodations for AEM, you should report the facility's refusal to the local office of Long-term Care Regulation, HHSC.

Are facilities subject to administrative penalties for violations of the electronic monitoring rules?

Yes. HHSC may assess an administrative penalty (see §553.751 of this chapter (relating to Administrative Penalties)) against a facility for each instance in which the facility:

(1) refuses to permit a resident, or the resident's guardian or legally authorized representative, to conduct AEM:

(2) refuses to admit an individual or discharges a resident because of a request to conduct AEM;

(3) discharges a resident because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates any other provision relating to AEM.

How does AEM affect the reporting of abuse and neglect?

Section 553.293 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities) requires facility staff to report abuse or neglect. If abuse or neglect has occurred, the most important thing is to report it. Abuse and neglect cannot be addressed unless reported.

For purposes of the duty to report abuse or neglect, the following apply:

(1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a recording made by the electronic monitoring device on or before the 14th day after the date the recording is made.

(2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a recording made by the electronic monitoring device to a person and directs the person to view or listen to the recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the recording is considered to have viewed or listened to the recording on or before the seventh day after the date the person receives the recording.

(3) A person is required to report abuse based on the person's viewing of or listening to a recording only if an incident of abuse is indicated on the recording. A person is required to report neglect based on the person's viewing of or listening to a recording only if it is clear from viewing or listening to the recording that neglect has occurred.

(4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant recording made by an electronic monitoring device, the person who possesses the recording must provide the facility with a copy at the facility's expense. The cost of the copy cannot exceed the community standard.

(5) A person who sends more than one recording to HHSC must identify each recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the recording that an incident of abuse or evidence of neglect may be found.

What is required for the use of a recording by an agency or court?

(a) Subject to applicable rules of evidence and procedure, a recording created through the use of covert monitoring or AEM may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a recording created using covert monitoring or AEM or take or authorize action based on the recording unless:

(1) the recording shows the time and date the events on the recording occurred, if the recording is a video recording;

(2) the contents of the recording have not been edited or artificially enhanced; and

(3) any transfer of the contents of the recording was done by a qualified professional and the contents were not altered if the contents have been transferred from the original format to another technological format.

Are there additional provisions of the law?

A person who places an electronic monitoring device in the room of a resident or who uses or discloses a recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another.

A person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device.

_____

Signature of Resident/Person Signing of Behalf of Resident Date

Figure: 37 TAC §36.60(a)

Violation	1st Violation	2nd within 2 years	3rd within 2 years	4th within 2 years
Address				
Address on File. (37 TAC §36.3)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Forms				
Forms. (37 TAC §36.4)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Declaration of Extent of Catalytic Converter Transactions (Occ. Code §1956.022, .024, or .127)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Ownership				
Change in Ownership. (37 TAC §36.13)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Locations				
Adding or Changing Locations. (37 TAC §36.18)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Notice to Sellers. (Occ. Code §1956.031)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Display Current Certificate of Registration (37 TAC §36.15(c))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Records				
Information Regarding Seller. (Occ. Code §1956.032)	Reprimand	Admin Penalty up to $500	Admin Penalty up to $1000	Revocation
Record of Purchase. (Occ. Code §1956.033)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Documentation of Fire-Salvaged Insulated Communications Wire. (37 TAC §36.33)	Reprimand	Admin Penalty up to $500	Admin Penalty up to $1000	Revocation
Photograph or Recording Requirement (Occ. Code §1956.0331)	Reprimand	Admin Penalty up to $500	Admin Penalty up to $1000	Revocation
Preservation of Records. (Occ. Code §1956.034)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Inspection of Records. (Occ. Code §1956.035)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Reporting Requirements. (37 TAC §36.31)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Furnishing of Report to Department. (Occ. Code §1956.036)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Placement of Items on Hold. (Occ. Code §1956.037)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation

Conduct				
Standards of Conduct. (37 TAC §36.36 (a), (b), or (d))	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Explosives. (37 TAC §36.36 (c))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Hours for Purchasing Material. (Occ. Code §1956.039)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Notice of Restrictions. (Occ. Code §1956.104)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Operating After Expiration of Registration. (Occ. Code §1956.021; §1956.023(d))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Misrepresentation of Registration Status When Expired. (Occ Code §1956.021; §1956.023(d))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Catalytic Converter Requirements. (Occ. Code §1956.0321; §1956.033; §1956.034; §1956.125)	Admin Penalty up to $500	Admin Penalty up to $1,000	Suspension 60 days	Revocation
Catalytic Converter Requirements. (Occ. Code §1956.123; Occ. Code §1956.124)	Admin Penalty up to $5,000	Admin Penalty up to $10,000	Suspension 60 days and Admin Penalty up to $10,000	Revocation and Admin Penalty up to $10,000
Training				
Texas Metals Program Recycler Training. (37 TAC §36.34)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Payment				
Payment by Metal Recycling Entity. (37 TAC §36.35, Occ. Code §1956.0381, or §1956.038(b))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Cash Transaction Card. (Occ. Code, §1956.0382)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Cash Transaction Card. (37 TAC §36.37)	Reprimand	Admin Penalty up to $500	Admin Penalty up to $1000	Revocation
Solicitation				
Solicitation of Purchase at Prohibited Location. (Occ. Code §1956.203)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation

Please note: For violations not listed above, the department may impose a penalty not to exceed $500 for the first violation, and $1,000 for the second violation within the preceding one-year period, under the authority of Rule 36.60(a).

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

The State of Texas Landowner's Bill of Rights

Prepared by THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

This Landowner's Bill of Rights applies to any attempt to condemn your property. The contents of this Bill of Rights are set out by the Texas Legislature in Texas Government Code section 402.031 and chapter 21 of the Texas Property Code. Any entity exercising eminent domain authority must provide a copy of this Bill of Rights to you.

1. You are entitled to receive adequate compensation if your property is condemned.

2. Your property can only be condemned for a public use.

3. Your property can only be condemned by a governmental entity or private entity authorized by law to do so.

4. The entity that wants to acquire your property must notify you that it intends to condemn your property.

5. The entity proposing to acquire your property must provide you with a written appraisal from a certified appraiser detailing the adequate compensation you are owed for your property.

6. If you believe that a registered easement or right-of-way agent acting on behalf of the entity that wants to acquire your property has engaged in misconduct, you may file a written complaint with the Texas Real Estate Commission (TREC) under section 1101.205 of the Texas Occupations Code. The complaint should be signed and may include any supporting evidence.

7. The condemning entity must make a bona fide offer to buy the property before it files a lawsuit to condemn the property-meaning the condemning entity must make a good faith offer that conforms with chapter 21 of the Texas Property Code.

8. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.

9. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.

10. Before your property is condemned, you are entitled to a hearing before a court-appointed panel of three special commissioners. The special commissioners must determine the amount of compensation the condemning entity owes for condemning your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.

11. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the condemnation of your property was proper, you have the right to a trial by a judge or jury. You may also appeal the trial court's judgment if you are unsatisfied with the result.

CONDEMNATION PROCEDURE

Eminent domain is the legal authority certain governmental and private entities have to condemn private property for public use in exchange for adequate compensation. Only entities authorized by law to do so may condemn private property. Private property can include land and certain improvements that are on that property.

Who can I hire to help me?

You can hire an appraiser or real estate professional to help you determine the value of your property as well as an attorney to negotiate with a condemning entity or to represent you during condemnation proceedings.

What qualifies as a public purpose or use?

Your property may be condemned only for a purpose or use that serves the general public. This could include building or expanding roadways, public utilities, parks, universities, and other infrastructure serving the public. Texas law does not allow condemning authorities to exercise eminent domain for tax revenue or economic development.

What is adequate compensation?

Adequate compensation typically means the market value of the property being condemned. It could also include certain damages if your remaining property's market value is diminished by the condemnation or the public purpose for which it is being condemned.

Other than adequate compensation, what other compensation could I be owed?

If you are displaced from your residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving to a new site. However, reimbursement costs may not be available if those expenses are recoverable under another law. Also, reimbursement costs are capped at the market value of the property.

What does a condemnor have to do before condemning my property?

- Provide you a copy of this Landowner's Bill of Rights before, or at the same time as, the entity first represents that it possesses eminent domain authority. It is also required to send this Landowner's Bill of Rights to the last known address of the person listed as the property owner on the most recent tax roll at least seven days before making its final offer to acquire the property.

-- If the condemnor seeks to condemn a right-of-way easement for a pipeline or electric transmission line and is a private entity, the condemnor must also provide you a copy of the Landowner's Bill of Right's addendum.

-- The addendum describes the standard terms required in an instrument conveying property rights (such as a deed transferring title or an easement spelling out the easement rights) and what terms you can negotiate.

- Make a bona fide offer to purchase the property. This process is described more fully in chapter 21 of the Texas Property Code. A "bona fide offer" involves both an initial written offer as well as a final written offer.

-- The initial written offer must include:

--- a copy of the Landowner's Bill of Rights and addendum (if applicable);

--- either a large-font, bold-print statement saying whether the offered compensation includes damages to the remainder of your remaining property *or* a formal appraisal of the property that identifies any damages to the remaining property (if any);

--- the conveyance instrument (such as an easement or deed); and

--- the name and telephone number of an employee, affiliate, or legal representative of the condemning entity.

-- The final written offer must be made at least 30 days after the initial written offer and must include, if not previously provided:

--- compensation equal to or more than the amount listed in a written, certified appraisal that is provided to you;

--- copies of the conveyance instrument; and

--- the Landowner's Bill of Rights.

- Disclose any appraisal reports. When making its initial offer, the condemning entity must share its appraisal reports that relate to the property from the past 10 years. You have the right to discuss the offer with others and to either accept or reject the offer made by the condemning entity.

What if I do not accept an offer by the condemning authority?

The condemnor must give you at least 14 days to consider the final offer before filing a lawsuit to condemn your property, which begins the legal condemnation process.

How does the legal condemnation process start?

The condemnor can start the legal condemnation process by filing a lawsuit to acquire your property in the appropriate court of the county where the property is located. When filing the petition, the condemnor must send you a copy of the petition by certified mail, return receipt requested, and first class mail. It must also send a copy to your attorney if you are represented by counsel.

What does the condemnor have to include in the lawsuit filed with the court?

The lawsuit must describe the property being condemned and state the following: the public use; your name; that you and the condemning entity were unable to agree on the value of the property; that the condemning entity gave you the Landowner's Bill of Rights; and that the condemning entity made a bona fide offer to voluntarily purchase the property from you.

SPECIAL COMMISSIONERS' HEARING AND AWARD

No later than 30 days after the condemning entity files a condemnation lawsuit in court, the judge will appoint three local landowners to serve as special commissioners and two alternates. The judge will promptly give the condemnor a signed order appointing the special commissioners and the condemnor must give you, your lawyer, and other parties a copy of the order by certified mail, return receipt requested. The special commissioners will then schedule a condemnation hearing at the earliest practical time and place and to give you written notice of the hearing.

What do the special commissioners do?

The special commissioners' job is to decide what amount of money is adequate to compensate you for your property. The special commissioners will hold a hearing where you and other interested parties may introduce evidence. Then the special commissioners will determine the amount of money that is adequate compensation and file their written decision, known as an "Award," in the court with notice to all parties. Once the Award is filed, the condemning entity may take possession and start using the property being condemned, even if one or more parties object to the Award of the special commissioners.

Are there limitations on what the special commissioners can do?

Yes. The special commissioners are tasked only with determining monetary compensation for the value of the property condemned and the value of any damages to the remaining property. They do not decide whether the condemnation is necessary or if the public use is proper. Further, the special commissioners do not have the power to alter the terms of an easement, reduce the size of the land acquired, or say what access will be allowed to the property during or after the condemnation. The special commissioners also cannot determine who should receive what portion of the compensation they award. Essentially, the special commissioners are empowered only to say how much money the condemnor should pay for the land or rights being acquired.

Who can be a special commissioner?

Special commissioners must be landowners and residents in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law.

What if I want to object to a special commissioner?

The judge must provide to the parties the names and contact information of the special commissioners and alternates. Each party will have up to 10 days after the date of the order appointing the special commissioners or 20 days after the date the petition was filed, whichever is later, to strike one of the three special commissioners. If a commissioner is struck, an alternate will serve as a replacement. Another party may strike a special commissioner from the resulting panel within three days after the date the initial strike was filed or the date of the initial strike deadline, whichever is later.

What will happen at the special commissioners' hearing?

The special commissioners will consider any evidence (such as appraisal reports and witness testimony) on the value of your condemned property, the damages or value added to remaining property that is not being condemned, and the condemning entity's proposed use of the property.

What are my rights at the special commissioners' hearing?

You have the right to appear or not appear at the hearing. If you do appear, you can question witnesses or offer your own evidence on the value of the property. The condemning entity must give you all existing appraisal reports regarding your property used to determine an opinion of value at least three days before the hearing. If you intend to use appraisal reports to support your claim about adequate compensation, you must provide them to the condemning entity 10 days after you receive them or three business days before the hearing, whichever is earlier.

Do I have to pay for the special commissioners' hearing?

If the special commissioners' award is less than or equal to the amount the condemning entity offered to pay before the proceedings began, then you may be financially responsible for the cost of the condemnation proceedings. But, if the award is more than the condemning entity offered to pay before the proceedings began, then the condemning entity will be responsible for the costs.

What does the condemnor need to do to take possession of the property?

Once the condemning entity either pays the amount of the award to you or deposits it into the court's registry, the entity may take possession

of the property and put the property to public use. Non-governmental condemning authorities may also be required to post bonds in addition to the award amount. You have the right to withdraw funds that are deposited into the registry of the court, but when you withdraw the money, you can no longer challenge whether the eminent domain action is valid-only whether the amount of compensation is adequate.

OBJECTING TO THE SPECIAL COMMISSIONERS' AWARD

If you, the condemning entity, or any other party is unsatisfied with the amount of the award, that party can formally object. The objection must be filed in writing with the court and is due by the first Monday following the 20th day after the clerk gives notice that the commissioners have filed their award with the court. If no party timely objects to the special commissioners' award, the court will adopt the award amount as the final compensation due and issue a final judgment in absence of objection.

What happens after I object to the special commissioners' award?

If a party timely objects, the court will hear the case just like other civil lawsuits. Any party who objects to the award has the right to a trial and can elect whether to have the case decided by a judge or jury.

Who pays for trial?

If the verdict amount at trial is greater than the amount of the special commissioners' award, the condemnor may be ordered to pay costs. If the verdict at trial is equal to or less than the amount the condemnor originally offered, you may be ordered to pay costs.

Is the trial verdict the final decision?

Not necessarily. After trial any party may appeal the judgment entered by the court.

DISMISSAL OF THE CONDEMNATION ACTION

A condemnation action may be dismissed by either the condemning authority itself or on a motion by the landowner.

What happens if the condemning authority no longer wants to condemn my property?

If a condemning entity decides it no longer needs your condemned property, it can file a motion to dismiss the condemnation proceeding. If the court grants the motion to dismiss, the case is over, and you can recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses up to that date.

What if I do not think the condemning entity has the right to condemn my property?

You can challenge the right to condemn your property by filing a motion to dismiss the condemnation proceeding. For example, a landowner could challenge the condemning entity's claim that it seeks to condemn the property for a public use. If the court grants the landowner's motion, the court may award the landowner reasonable and necessary fees and expenses incurred to that date.

Can I get my property back if it is condemned but never put to a public use?

You may have the right to repurchase your property if your property is acquired through eminent domain and:

- the public use for which the property was acquired is canceled before that property is put to that use,

- no actual progress is made toward the public use within 10 years, or

- the property becomes unnecessary for public use within 10 years.

The repurchase price is the price you were paid at the time of the condemnation.

ADDITIONAL RESOURCES AND ADDENDUM

For more information about the procedures, timelines, and requirements outlined in this document, see chapter 21 of the Texas Property Code. An addendum discussing the terms required for an instrument of conveyance under Property Code section 21.0114(c), and the conveyance terms that a property owner may negotiate under Property Code section 21.0114(d), is attached to this statement.

The information in this statement is intended to be a summary of the applicable portions of Texas state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session, and HB 2730, enacted by the 87th Texas Legislature, Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

TRD-202304722
Justin Gordon
General Counsel
Office of the Attorney General
Filed: December 13, 2023

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Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Equistar Chemicals, LP;* Cause No. D-1-GN-22-001749, in the 455th Judicial District Court, Travis County, Texas.

Background: Defendant Equistar Chemicals, LP ("the Defendant") operates a chemical manufacturing plant located in Pasadena, Texas. The State filed an environmental enforcement action on behalf of the Texas Commission on Environmental Quality ("TCEQ") against the Defendant for violating the Texas Clean Air Act, as well as TCEQ rules and permits issued thereunder. Specifically, there were 14 emissions events and several permit and rule deviations.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides an award to the State of $1,445,000 in civil penalties, and $55,000 in attorney's fees, and post-judgment interest.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Roel Torres, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email: roel.torres@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202304697
Justin Gordon
General Counsel
Office of the Attorney General
Filed: December 12, 2023

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/18/23 - 12/24/23 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/18/23 - 12/24/23 is 18.00% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202304711
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 13, 2023

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Texas Education Agency

Notice of Correction Concerning the 2024-2025 Charter School Program (Subchapter C) Grant under Request for Applications (RFA) #701-24-117

Filing Authority. The availability of grant funds under RFA #701-24-117 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, Title IV, Part C, Expanding Opportunity Through Quality Charter Schools; Texas Education Code (TEC), Chapter 12; and 19 Texas Administrative Code Chapter 100, Subchapter AA.

The Texas Education Agency (TEA) published Request for Applications Concerning the 2024-2025 Charter School Program (Subchapter C) Grant in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7187).

TEA is correcting the applicant eligibility. In the Eligible Applicants section, the criteria are amended to read, "a campus charter school authorized by the local board of trustees pursuant to TEC, Chapter 12, Subchapter C, on or before January 22, 2024, as a new charter school, or as a charter school that is designed to replicate a new charter school campus, based on the educational model of an existing high-quality charter school, and that submits all required documentation as stated in this RFA."

TRD-202304708
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 13, 2023

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 26, 2024.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 26, 2024.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ACE Aggregates, LLC; DOCKET NUMBER: 2021-1142-EAQ-E; IDENTIFIER: RN109436402; LOCATION: Mico, Medina County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $11,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(2) COMPANY: Alanreed Travel Center LLC; DOCKET NUMBER: 2023-1066-PST-E; IDENTIFIER: RN102480282; LOCATION: Alanreed, Gray County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $7,374; ENFORCEMENT COORDINATOR: Danielle Fishbeck, (512) 239-5083; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: City of Childress; DOCKET NUMBER: 2022-1577-MSW-E; IDENTIFIER: RN102328101; LOCATION: Childress, Childress County; TYPE OF FACILITY: city landfill; RULES VIOLATED: 30 TAC §330.125(b)(2) and Municipal Solid Waste (MSW) Permit Number 2263, Section III.L- Facility Design, Construction, and Operation, by failing to record and retain copies of all records concerning inspections, training procedures, and notification procedures relating to excluding the receipt of prohibited waste; 30 TAC §330.137, by failing to conspicuously display at all entrances through which wastes are received signage that states an emergency 24-hour contact phone number that will reach an individual with the authority to obligate the facility at all times that the facility is closed; and 30 TAC §330.139 and MSW Permit Number 2263, Section VII.J-

Standard Permit Conditions, by failing to collect and properly manage windblown solid waste; PENALTY: $12,688; ENFORCEMENT COORDINATOR: Eresha DeSilva, (512) 239-5084; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: City of Lufkin; DOCKET NUMBER: 2020-1536-MWD-E; IDENTIFIER: RN101609964; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010214001, Permit Conditions Number 2.g and Operational Requirements Number 1, by failing to properly operate and maintain the systems of collection which resulted in an unauthorized discharge of municipal waste into or adjacent to any water in the state; PENALTY: $6,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,000; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: City of Rising Star; DOCKET NUMBER: 2021-1534-MWD-E; IDENTIFIER: RN103138137; LOCATION: Rising Star, Eastland County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014515001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $21,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $16,800; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 755-6327; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: CONTRACTOR'S SUPPLIES, INCORPORATED; DOCKET NUMBER: 2022-0461-WQ-E; IDENTIFIER: RN100250034; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number TXG110319, Part III, Section A.1, by failing to comply with permitted effluent limitations; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Covia Holdings LLC; DOCKET NUMBER: 2022-1284-WQ-E; IDENTIFIER: RN109877159; LOCATION: Kermit, Winkler County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25, by failing to renew the APO registration annually as regulated activities continued; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: Heritage Acres, LLC dba EJ Water and David Michael Chandler dba EJ Water; DOCKET NUMBER: 2021-1526-PWS-E; IDENTIFIER: RN101439875; LOCATION: Gladewate, Gregg County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate the facility's well at least 150 feet away from septic tank perforated drainfields, areas irrigated by low dosage, low angle spray on-site sewage facilities, absorption beds, evapotranspiration beds, improperly constructed water wells, or underground petroleum and chemical storage tanks or liquid transmission pipelines; 30 TAC §290.41(c)(3)(J), by failing to provide the wells with a concrete sealing block that extends a minimum of three feet from the exterior well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound; 30 TAC §290.41(c)(3)(L), by failing to provide a well blow-off line that terminates in a downward direction and at a point which will not be submerged by flood waters; 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards that is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation which includes high level and floor level screened vents for all enclosures in which chlorine gas is being stored or fed; 30 TAC §290.42(j), by failing to use an approved chemical or media for the treatment of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (vi) and (vii), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(B), by failing to conduct an inspection of the interior of the facility's pressure tank with an inspection port at least once every five years; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meters at least once every three years; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: $11,024; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: HURTADO CONSTRUCTION COMPANY; DOCKET NUMBER: 2023-0992-AIR-E; IDENTIFIER: RN111122339; LOCATION: Fulshear, Fort Bend County; TYPE OF FACILITY: construction and land development site; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: $3,937; ENFORCEMENT COORDINATOR: Karyn Olschesky, (817) 588-5896; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Pilot Thomas Logistics LLC; DOCKET NUMBER: 2022-1304-PST-E; IDENTIFIER: RN102230844; LOCATION: Sundown, Hockley County; TYPE OF FACILITY: former bulk plant with retail sales of fuel; RULES VIOLATED: 30 TAC §37.815(a) and (b) and §334.54(b)(1) and (2), by failing to keep all vent lines open and functioning, and failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, and, also failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202304694
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 12, 2023

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Permit No. WQ0016274001

APPLICATION AND PRELIMINARY DECISION. Moore Farm Water Control and Improvement District No. 1, 14755 Preston Road, Suite 600, Dallas, Texas 75254, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016274001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. TCEQ received this application on December 14, 2022.

The facility will be located approximately 0.35 miles southwest of the intersection of County Road 243 and County Road 245, in Kaufman County, Texas 75160. The treated effluent will be discharged to Little High Point Creek, thence to High Point Creek, thence Big Brushy Creek, thence to Kings Creek, thence to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for Little High Point Creek, and high aquatic life use for High Point Creek and Big Brushy Creek. The designated uses for Segment No. 0818 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the *TCEQ Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in High Point Creek or Big Brushy Creek, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.309166,32.804444&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Riter C. Hulsey Public Library, 301 North Rockwall Avenue, Terrell, Texas.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, January 25, 2024 at 7:00 p.m.

Fairfield Inn & Suites

351 Market Center Drive

Terrell, Texas 75160

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Moore Farm Water Control and Improvement District No. 1 at the address stated above or by calling Mr. Jonathan Nguyen, Quiddity Engineering, at (512) 685-5156.

Issuance Date: December 12, 2023

TRD-202304716
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Enforcement Order

An agreed order was adopted regarding PAPCO, INC., Docket No. 2022-1370-AIR-E on December 12, 2023 assessing $2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202304721
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Enforcement Orders

A default order was adopted regarding SRC Water Supply Inc., Docket No. 2020-1072-PWS-E on December 13, 2023, assessing $1,388 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Energy Transfer GC NGL Fractionators LLC f/k/a Lone Star NGL Fractionators LLC, Docket No. 2021-0232-AIR-E on December 13, 2023, assessing $39,206 in administrative penalties with $7,841 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding SRC Water Supply Inc, Docket No. 2021-0327-PWS-E on December 13, 2023, assessing $250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SRC Water Supply Inc, Docket No. 2021-0331-PWS-E on December 13, 2023, assessing $300 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Rampage Cattle Company, LLC, Docket No. 2021-0516-MSW-E on December 13, 2023, assessing $10,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Barrett Hollingsworth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Town of Woodsboro, Docket No. 2021-0677-MWD-E on December 13, 2023, assessing $30,925 in administrative penalties with $6,185 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OXY USA WTP LP, Docket No. 2021-0962-AIR-E on December 13, 2023, assessing $234,000 in administrative penalties with $46,800 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Gerardo Castaneda, Docket No. 2021-0983-MSW-E on December 13, 2023, assessing $6,203 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding SRC Water Supply Inc., Docket No. 2021-1047-PWS-E on December 13, 2023, assessing $5,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monument Chemical Port Arthur, LLC, Docket No. 2021-1157-MWD-E on December 13, 2023, assessing $23,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Athens, Docket No. 2021-1168-MWD-E on December 13, 2023, assessing $18,750 in administrative penalties with $3,750 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hernandez Rock, Inc., Docket No. 2021-1349-WQ-E on December 13, 2023, assessing $15,563 in administrative penalties with $3,112 deferred. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Alto, Docket No. 2021-1471-MWD-E on December 13, 2023, assessing $15,000 in administrative penalties with $3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mary Janet Hendrix Duncan, Docket No. 2022-0227-MLM-E on December 13, 2023, assessing $7,875 in administrative penalties with $1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Shane Glantz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RDS Opportunity Fund LLC dba Golden Triangle Business Park, Docket No. 2022-0305-PWS-E on December 13, 2023, assessing $15,376 in administrative penalties with $3,075 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Buckeye Texas Processing LLC, Docket No. 2022-0398-MLM-E on December 13, 2023, assessing $169,405 in administrative penalties with $33,881 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Baird, Docket No. 2022-0646-MWD-E on December 13, 2023, assessing $9,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Montgomery, Docket No. 2022-0935-MWD-E on December 13, 2023, assessing $10,125 in administrative penalties with $2,025 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lyondell Chemical Company, Docket No. 2023-0596-AIR-E on December 13, 2023, assessing $32,525 in administrative penalties with $6,505 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202304720
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Notice of Correction to Agreed Order Number 6

In the July 21, 2023, issue of the *Texas Register* (48 TexReg 4010), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 6, for City of Springtown; Docket Number 2022-0233-PWS-E. The error is as submitted by the commission.

The reference to the Supplemental Environmental Project Offset Amount should be added to the publication to read: "$1,392."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202304695

Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 12, 2023

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Notice of District Petition

Notice issued December 8, 2023

TCEQ Internal Control No. D-09142023-018; Maple View Development LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District No. 88 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Plains State Bank, a Texas state bank, on the property to be included in the proposed District and information provided indicates that the lienholder consents to the creation of the proposed District); (3) the proposed District will contain approximately 238.466 acres located within Brazoria County, Texas; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Alvin and within the extraterritorial jurisdiction of the Village of Bonney. By Ordinance No. 22-DDD, passed and approved on December 15, 2022, the City of Alvin, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. By Ordinance No. 6-2022, passed and approved on November 15, 2022, the Village of Bonney, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016.

The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $50,920,000 ($28,595,000 for water, wastewater, and drainage, $8,725,000 for roads, and $13,600,000 for recreation).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304717
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Notice of District Petition

Notice issued December 8, 2023

TCEQ Internal Control No. D-07072023-009; Howe Land Partners, LLC, a Texas limited liability company, and Horizon Capital Partners, LLC, a Texas limited liability company (collectively, Petitioners) filed a petition for the creation of Noble Ridge Municipal Utility District of Grayson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority of the land in the proposed District; (2) there are no lienholders on the land to be included in the proposed District; (3) the proposed District will contain approximately 142.936 acres of land, more or less, located within Grayson County, Texas; (4) all of the land to be included within the proposed District is located within the corporate limits of the City of Howe (City); and (5) the City has consented to creation of and inclusion of the land within the District by resolution (Resolution No. 22022-0010) adopted on December 13, 2022. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection and disposal system, for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate such additional facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is created. It further states that the planned residential development of the area and its present and future inhabitants will benefit from the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner,

from the information available at this time, that the cost of said project will be approximately $18,100,000 ($13,000,000 for water, wastewater, and drainage facilities and $5,100,000 for road facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304719
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 26, 2024.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 26, 2024.** The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: BUSHWACKERS LAND SERVICES LLC.; DOCKET NUMBER: 2020-1422-MLM-E; TCEQ ID NUMBERS: RN110934619 and RN108075797; LOCATION: two miles south of the intersection of Farm-to-Market Road 188 and Farm-to-Market Road 1069 near Aransas Pass, Aransas County; TYPE OF FACILITY: aggregate production operation and a portable rock crusher; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and TWC, §26.121, 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; PENALTY: $5,000; STAFF ATTORNEY: Benjamin Pence, Litigation, MC 175, (512) 239-2157; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(2) COMPANY: Carlos Diaz; DOCKET NUMBER: 2022-0858-PST-E; TCEQ ID NUMBER: RN102234978; LOCATION: 1301 Santa Maria Avenue, Laredo, Webb County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manway, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $5,250; STAFF ATTORNEY: Erandi Ratnayake, Litigation, MC 175, (512) 239-6515; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202304698

Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 12, 2023

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of TJP Enterprises, LLC DBA All American Tire Recyclers SOAH Docket No. 582-24-05309 TCEQ Docket No. 2020-1465-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

10:00 a.m. - January 11, 2024

To join the Zoom meeting via computer or smart device:

https://soah-texas.zoomgov.com

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed November 4, 2021 concerning assessing administrative penalties against and requiring certain actions of TJP Enterprises, LLC dba All American Tire Recyclers, for violations in Tarrant County, Texas, of: Tex. Health & Safety Code § 361.112(a), 30 Texas Administrative Code §328.60(a), §328.63(b), and TCEQ Agreed Order Docket No. 2019-0681-MSW-E, Ordering Provision Nos. 2.a, 2.b, and 2.c.

The hearing will allow TJP Enterprises, LLC dba All American Tire Recyclers, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford TJP Enterprises, LLC dba All American Tire Recyclers, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of TJP Enterprises, LLC dba All American Tire Recyclers to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** TJP Enterprises, LLC dba All American Tire Recyclers, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and ch. 7, Tex. Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 328; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Barrett Hollingsworth, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 6, 2023

TRD-202304712
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Wing Dingers Texas LLC. and Christopher R. Fischer SOAH Docket No. 582-24-06200 TCEQ Docket No. 2021-0200-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 11, 2024

To join the Zoom meeting via computer or smart device:

https://soah-texas.zoomgov.com

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 21, 2022 concerning assessing administrative penalties against and requiring certain actions of Wing Dingers Texas LLC. and Christopher R. Fischer, for violations in Wood County, Texas, of: Tex. Health & Safety Code § 341.035(a) and 30 Texas Administrative Code §290.39(e)(1) and (h)(1).

The hearing will allow Wing Dingers Texas LLC. and Christopher R. Fischer, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Wing Dingers Texas LLC. and Christopher R. Fischer, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Wing Dingers Texas LLC. and Christopher R. Fischer to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Wing Dingers Texas LLC. and Christopher R. Fischer, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341 and 30 Texas Administrative Code Chapters 70 and 290; Tex. Health & Safety Code § 341.049, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and Chapter 80, and 1 Texas Administrative Code Chapter 155.

Further information regarding this hearing may be obtained by contacting Clayton Smith, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 6, 2023

TRD-202304713
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater Amendment Permit No. WQ0011378001

APPLICATION. Guadalupe-Blanco River Authority, 933 East Court Street, Seguin, Texas 78155, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011378001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 950,000 gallons per day to an annual average not to exceed 2,950,000 gallons per day. TCEQ received this application on August 5, 2019.

The facility is located at 174 Century Ranch Road, New Braunfels, in Guadalupe County, Texas 78130. The treated effluent is discharged via Outfalls 001 and 002 directly to the Guadalupe River Below Comal River in Segment No. 1804 of the Guadalupe River Basin. The designated uses for Segment No. 1804 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the Guadalupe River Below Comal River which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.073888%2C29.6625&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. Dur-

ing the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, January 23, 2024 at 7:00 p.m.

GBRA River Annex

905 Nolan Street

Seguin, Texas 78155

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Guadalupe-Blanco River Authority General Office, 933 East Court Street, Seguin, Texas. Further information may also be obtained from Guadalupe-Blanco River Authority at the address stated above or by calling Ms. Ashley Lewis, Interim Water Quality/Permitting Team Leader, Plummer, at (512) 687-2154.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: December 08, 2023

TRD-202304714
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Notice of Water Quality Application

The following notices was issued on December 7, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0014080001 issued to Southern Utilities Company, to authorize the addition of pH monitoring frequency. The existing permit authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located at 19246 County Road 178, in Smith County, Texas 75762.

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS PUBLISHED IN *TEXAS REGISTER.*

INFORMATION SECTION

Montgomery County Municipal Utility District No. 99 has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0014604001 to authorize to add an Interim III phase, and to increase the flow for the Interim I and II phases. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 2907 Woodland Glen Lane, in Montgomery County, Texas 77385.

TRD-202304715
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 13, 2023

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Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective January 1, 2024.

The purpose of the amendment is to clarify the coverage of certain services like durable medical equipment and drugs for renal dialysis services as payable outside of the current composite rate.

The proposed amendment is estimated to result in an annual aggregate expenditure of $41,626 for federal fiscal year (FFY) 2024, consisting of $25,030 in federal funds and $16,596 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is $61,776 consisting of $37,356 in federal funds and $24,420 in state general revenue. For FFY 2026, the estimated annual aggregate expenditure is $61,121 consisting of $36,978 in federal funds and $24,143 in state general revenue.

Rate Hearing. The details for the hearing will be published at a later date for the alternative payment methodology. Information about the rate hearing and rates will be published in the *Texas Register* at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendment(s). To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; by facsimile at (512) 730-7472; or by email at medicaid_chip_spa_inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of HHSC.

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

pfd_hospitals@hhsc.state.tx.us

Preferred Communication.

For quickest response, please use email or phone, if possible, for communication with HHSC related to this state plan amendment.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202304589
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 7, 2023

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Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA) Release for 2024 Community Services Block Grant Discretionary (CSBG-D) Funds - Native American and Migrant and Seasonal Farm Worker Education and Employment Initiatives

The Texas Department of Housing and Community Affairs (the Department) announces the availability of $300,000 in CSBG-Discretionary funding for education and employment initiatives for migrant and seasonal farm worker and Native American populations. Each year the Department sets aside 5% of its annual CSBG allocation for state discretionary use. Each year, funds from CSBG-Discretionary are used for specific identified efforts that the Department supports and other ongoing initiatives such as employment and education programs for migrant and seasonal farm workers and Native Americans. This year, $300,000 has been programmed for migrant and seasonal farm worker and Native American populations' employment and education programs for which the Department is issuing this NOFA. The Department will release funds competitively.

The Department's anticipated contract period for 2024 CSBG-Discretionary migrant and seasonal farm worker and Native American employment and education initiatives is April 1, 2024, through March 31, 2025.

Interested applicants must meet the requirements set forth in the NOFA and must submit a complete application through the established system described in the NOFA by Tuesday, January 9, 2024, 5:00 p.m., Austin local time.

The application forms contained in this packet and submission instructions are available on the Department's web site at http://www.tdhca.state.tx.us/nofa.htm. Should you have any related questions, please contact Rita Gonzales-Garza at (512) 475-3905 or rita.garza@tdhca.state.tx.us.

TRD-202304602
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 8, 2023

♦ ♦ ♦

Notice of Funding Availability (NOFA) Release for 2024 Community Services Block Grant Discretionary (CSBG-D) Funds - Reentry Activities Pilot Program

The Texas Department of Housing and Community Affairs (the Department) announces the availability of $400,000 in CSBG Discretionary funding for a Reentry Activities Pilot Program. Each year the Department sets aside 5% of its annual CSBG allocation for state discretionary use. Each year funds from CSBG Discretionary are used for specific identified efforts that the Department supports such as assisting previously incarcerated individuals reenter the community and helping them to obtain rental housing through landlord incentives, security deposits and other reentry activities related to housing. This year, $400,000 has been programmed for the Reentry Activities Pilot Program for which the Department is issuing this NOFA. The Department will release funds competitively.

The Department’s contract period for the 2024 CSBG Discretionary Reentry Activities Pilot Program is 12 months and will begin between March 1, 2024, and July 1, 2024.

Interested applicants must meet the requirements set forth in the application and must submit a complete application through the established system described in the NOFA by 5:00 p.m., Austin local time, Monday, January 15, 2024.

The application forms contained in this packet and submission instructions are available on the Department’s web site at http://www.tdhca.state.tx.us/nofa.htm. Should you have any questions, please contact Madison Lozano at (512) 936-7798 or madison.lozano@tdhca.state.tx.us.

TRD-202304603
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 8, 2023

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Notice of Public Comment Period and Public Hearing on the Draft 2024 State of Texas Low Income Housing Plan and Annual Report

The Texas Department of Housing and Community Affairs (TDHCA) will hold a public comment period from Friday, December 22, 2023 through 5:00 p.m. Austin local time on Monday, January 22, 2024, to obtain public comment on the Draft 2024 State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The SLIHP offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2022, through August 31, 2023).

During the public comment period, a public hearing will take place as follows:

Tuesday, January 9, 2024

2:00 p.m. Central Standard Time

Barbara Jordan State Office Building

1601 Congress Ave. Room 2.042

Austin, Texas 78711

Anyone may submit comments on the SLIHP in written form or oral testimony at the public hearing. Written comments may be submitted to Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: info@tdhca.state.tx.us.

The full text of the Draft 2024 SLIHP may be viewed at the Department's website: http://www.tdhca.state.tx.us/public-comment.htm. The public may also receive a copy of the Draft 2024 SLIHP by contacting TDHCA's Housing Resource Center at (512) 475-3976.

Individuals who require auxiliary aids, services or sign language interpreters for this public hearing should contact Nancy Dennis, at (512) 475-3959 or by email at nancy.dennis@tdhca.state.tx.us or Relay Texas at 1-800-735-2989, at least five (5) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearings should contact Danielle Leath by phone at (512) 475-4606 or by email at Dannielle.Leath@tdhca.state.tx.us at least five (5) days before the hearings so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Danielle Leath al siguiente número (512) 475-4606 o enviarle un correo electrónico a Danielle.Leath@tdhca.state.tx.us por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

TRD-202304661
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 11, 2023

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Harbor Health Insurance Company, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202304709
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: December 13, 2023

♦ ♦ ♦

Correction of Error

The Texas Department of Insurance (TDI) proposed new 28 TAC §7.216 in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7159). Due to an error by TDI, the subsections included in the rule were mis-lettered. The text of the proposed new rule should read as follows:

§7.216. Liquidity Stress Test Framework.

(a) Purpose. This section specifies the requirements for the ultimate controlling person of an insurance holding company system to submit a liquidity stress test framework necessary to report information as required by Insurance Code §823.0596.

(b) Liquidity stress test framework. The commissioner adopts by reference the liquidity stress test framework as adopted and published by the National Association of Insurance Commissioners (NAIC). The liquidity stress test framework is available on the department's website.

(c) Scope criteria. The scope criteria are the designated criteria and thresholds described in the liquidity stress test framework as adopted by reference in subsection (b) of this section.

(d) Reporting template. The reporting template an insurer must use is described in the liquidity stress test framework as adopted in subsection (b) of this section.

(e) Filing. Using the reporting template described in the liquidity stress test framework adopted by reference in subsection (b) of this section, the ultimate controlling person of an insurer must submit a liquidity stress test framework filing on or before June 30 of each year, using the appropriate reporting template in an electronic format acceptable to TDI. The electronic filing address is provided on TDI's website at www.tdi.texas.gov.

(f) Exemption. Only after consultation with other state insurance commissioners will the commissioner exempt from the filing requirement a data year that an insurer would otherwise be required to submit under subsection (e) of this section.

(g) Conflicts. In the event of a conflict between the liquidity stress test framework adopted and published by the NAIC and the Insurance Code, any TDI rule, or any specific requirement of this section, the Insurance Code, TDI rule, or specific requirement of this section takes precedence and in all respects controls. The requirements of this section do not repeal, modify, or amend any TDI rule or any Insurance Code provision.

TRD-202304693
Jessica Barta
General Counsel
Texas Department of Insurance
Filed: December 11, 2023

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Texas Department of Licensing and Regulation

Notice of Vacancy on Speech-Language Pathologists and Audiologists Advisory Board

The Texas Department of Licensing and Regulation (Department) announces one vacancy on the Speech-Language Pathologists and Audiologists Advisory Board (Board) established by Texas Occupations Code, Chapter 401. The purpose of the Speech-Language Pathologists and Audiologists Advisory Board is to provide advice and recommendations to the Department on technical matters relevant to the administration of this chapter. **This announcement is for:**

- one public member who is a licensed physician in this state and certified in otolaryngology or pediatrics.

The Board is composed of nine members appointed by presiding officer of the Texas Commission of Licensing and Regulation (Commission), with the Commission's approval. Members serve staggered six-year terms with the terms of three members expire September 1 of each odd-numbered year. The Board is composed of the following members:

1. three audiologists;

2. three speech-language pathologists; and

3. three members who represent the public.

Advisory board members must:

1. be from the various geographic regions of the state; and

2. be from varying employment settings.

The advisory board members appointed under subsections (a)(1) and (2) must:

1. have been engaged in teaching, research, or providing services in speech-language pathology or audiology for at least five years; and

2. be licensed under this chapter.

One of the public members must be a physician licensed in this state and certified in otolaryngology or pediatrics.

Interested persons should complete an application on the Department website at: *https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx.* Applicants can also request an application from the Department by telephone (800) 803-9202 or e-mail *advisory.boards@tdlr.texas.gov.*

This is not a paid position and there is no compensation or reimbursement for serving on the Board.

TRD-202304699
Christina Kaiser
Interim Executive Director
Texas Department of Licensing and Regulation
Filed: December 12, 2023

Public Notice - Motorcycle Safety and Training Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held December 1, 2023, the Commission adopted the Texas Department of Licensing and Regulation's (Department) enforcement plan, which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is drafted to include the penalty matrix for the Motorcycle Safety and Training program.

The Texas Legislature enacted Senate Bill 616 (S.B. 616), 86th Legislature, Regular Session (2019), which transferred oversight of the Motorcycle and ATV Operator Safety program from the Texas Department of Public Safety to the Texas Department of Licensing and Regulation.

The Enforcement Plan was presented to the Commission on December 1, 2023, and was adopted as recommended.

The enforcement plan is posted on the Department's website.

MOTORCYCLE SAFETY AND TRAINING
Penalties and Sanctions

Schools, instructors, and instructor Training providers

Texas Transportation Code, Chapter 662
Texas Occupations Code, Chapter 51
16 Texas Administrative Code, Chapter 98
16 Texas Administrative Code Chapter 60

Class A Violations

Penalty: $200 - $500

Motorcycle School Violations

Violation	Statute/Rule
Failed to maintain range for training site	98.72(a)(8) 98.100(a)(1)(A)-(F)
Failed to maintain a proper classroom for training	98.72(a)(8) 98.100(a)(3)(A)-(D)
Failed to have a first aid kit and fire extinguisher at training site	98.72(a)(8) 98.100(a)(2)

Administrative Violations

Violation	Statute/Rule
Motorcycle school or instructor training provider failed to report to the Department information of each student or trainee enrolled in the course by the fifth business day after the end of each course.	98.50(b)(1)-(3) 98.71(b)(1)(A)-(C) 98.72(a)(4)
Motorcycle school failed to submit a quarterly report to the Department	98.50(c)(1)-(5) 98.72(a)(4)

Instructor or instructor training provider failed to notify the Department of changes in the instructor's address, phone number, or email address within 15 days of the date of change	98.70(a)(1) 98.71(a)(1)
Motorcycle school failed to notify the Department of changes to the information provided for initial licensure within 15 days of the date of the change	98.72(a)(1)
Motorcycle school failed to conduct course in accordance with the Department approved curriculum	98.72(a)(12)
Motorcycle school failed to notify the Department within 15 days of any curriculum changes	98.72(a)(12)
Motorcycle school failed to notify the Department at least 15 days prior to relocation	98.72(a)(6) 98.74(a)
Motorcycle school failed to inform each student in writing of the department's name, mailing address, telephone number, and website address for the purpose of directing complaints to the department	98.104(e) 98.104(f)

Safety Violations

Violation	Statute/Rule
Instructor or instructor training provider failed to wear the protective gear required when riding a motorcycle to, from, or during rider training activities	98.70(a)(13) 98.71(a)(1) 98.108(e)(1)-(6)
Motorcycle school, instructor, or instructor training provider failed to ensure all students wear the protective gear required when participating in the on-cycle activities of the course	98.70(a)(14) 98.71(a)(1) 98.72(a)(15) 98.108(e)(1)-(6)

Insurance Violations

Violation	Statute/Rule
Instructor failed to ensure that each motorcycle provided by a student meets the insurance requirements before the motorcycle was used on the range	98.70(a)(8) 98.102(b)(2)

Class B Violations

Penalty: $500 up to $1,500 and/or up to 1-year probated suspension

Administrative Violations

Violation	Statute/Rule
Instructor or instructor training provider failed to maintain a valid driver license	98.70(a)(2) 98.71(a)(1)
Instructor training provider failed to maintain a current instructor license issued by the Department	98.71(a)(2)
Instructor or instructor training provided instruction in motorcycle operation while failing to maintain a driving record that meets the requirements of §98.21(5)	98.21(5) 98.70(a)(3) 98.71(a)(1)
Instructor or instructor training provider failed to provide instruction in compliance with a curriculum approved by the department	98.20(a)(2) 98.70(a)(9) 98.71(a)(1)
Instructor or instructor training provider failed to comply with the student-to-instructor ratio requirements in §98.108	98.70(a)(11) 98.71(a)(1) 98.108(b)-(c)
Motorcycle school failed to maintain records of courses and individuals course completion certificates for 3 calendar years	98.72(a)(16)
Instructor training provider failed to maintain records of courses conducted, including each individual who received a course completion certificate, for 3 calendar years	98.71(b)(2)
Motorcycle school accepted a student under the age of 18 without written consent from parent or legal guardian	98.72(a)(10) 98.104(c)
Motorcycle school failed to inform student in writing of school's policies prior to accepting payment from an individual for admission to an entry-level course.	98.104(d)(1)-(2)
Motorcycle school failed to notify the Department within 30 days after a change of ownership	98.72(a)(7) 98.76(b)

Course Violations

Violation	Statute/Rule
Motorcycle school conducted motorcycle training that is not in accordance with a Department approved curriculum	98.25(2) 98.108(a) 662.006(a)(2)
Motorcycle school failed to issue a department-approved course completion certificate to a student who has successfully completed an entry-level course.	98.72(a)(11) 98.106(a)-(b)
Motorcycle school allowed instruction that did not comply with the student-to-instructor ratio requirements in §98.108	98.72(a)(14) 98.108(b)-(c)
Motorcycle school failed to make available a separate motorcycle for each student in a two-wheeled motorcycle course	98.108(d)
Motorcycle school allowed more than two students to share a motorcycle in a three-wheeled motorcycle course	98.108(d)
Motorcycle school did not maintain ownership of, or have written authorization by the owner to use training site and motorcycles	98.72(a)(2)
Motorcycle school offered or conducted a course without authorization from the owner of the course	98.72(b)(2)
Motorcycle school failed to issue a department-approved course completion certificate restricted to the operation of a three-wheeled motorcycle for completion of a course specific to operation of a three-wheeled motorcycle.	98.106(b)

Safety Violations

Violation	Statute/Rule
Instructor or instructor training provider failed to report each injury to the motorcycle school in a timely manner	98.70(a)(5) 98.71(a)(1)
Motorcycle school, instructor, or instructor training provider failed to ensure each motorcycle to be used on the range meets the requirements of §98.102	98.70(a)(7) 98.71(a)(1) 98.72(a)(9)

	98.102(a)-(c)
Instructor or instructor training provider provided instruction while not being capable of instructing the entire course and providing technically correct riding demonstrations	98.70(a)(10) 98.71(a)(1)
Instructor or instructor training provider failed to supervise all students and personnel on the range	98.70(a)(12) 98.71(a)(1)
Motorcycle school failed to report each injury to the Department in a timely manner.	98.50(a)(1)-(2) 98.72(a)(4)
Motorcycle school, instructor, or instructor training provider allowed unauthorized person on the range during range instruction	98.108(f)(1)-(4)
Motorcycle school, instructor, or instructor training provider allowed range assistant to provide instruction or evaluation of students	98.108(g)

Unlicensed Activity – Expired License

Violation	Statute/Rule
Motorcycle school offered or conducted training in motorcycle operation for consideration with an expired license	662.006(a)(1) 98.25(1)
Instructor offered or provided instruction in motorcycle operation to the public for consideration with an expired license	98.20(a)(1)
Instructor training provider offered or conducted an instructor training course with an expired license	662.0064(a) 98.24(a)
Instructor provided instruction not as an employee of, or under contract with, a motorcycle school	98.20(a)(3)

Class C Violations

Penalty: $1,500 up to $3,000 and/or 1-year probated suspension up to revocation

Unlicensed Activity – No License

Violation	Statute/Rule

Offered or conducted training in motorcycle operation for consideration without an instructor license	98.20(a)(1)
Offered or conducted training in motorcycle operation without a motorcycle school license	662.006(a)(1) 98.25(1)
Offered or conducted an instructor training course without an instructor training provider license	662.0064(a) 98.20(a)(1)
Employed or contracted with an unlicensed instructor to conduct training in motorcycle operation for consideration	662.006(a)(3) 98.25(3) 98.72(a)(13)

Insurance Violations

Violation	Statute/Rule
Motorcycle school failed to maintain the required insurance policy for the motorcycle school	98.40 98.72(a)(3)

Safety Violations

Violation	Statute/Rule
Instructor or instructor training provider failed to remove student whose riding performance created an unmanageable danger on the range	98.106(d)
Instructor or instructor training provider failed to act immediately to appropriately address the medical needs of any person injured at the training site and summon emergency medical services if necessary	98.70(a)(4) 98.71(a)(1)

Integrity Violations

Violation	Statute/Rule
Obtained a license by fraud	662.008(a)(2)
Motorcycle school, instructor, or instructor training provider completed, issued, or validated a course completion	98.70(b)(2) 98.71(a)(1) 98.72(b)(1)

certificate to a person who has not successfully completed the course	98.106(d)
Induced or countenanced fraud or fraudulent practice by a person applying for a driver license/permit	662.008(a)(3)
Induced or countenanced fraud or fraudulent practice in an action between the applicant/licensee and public	662.008(a)(4)
Failed to implement effective protective measures to ensure that unissued course completion certificates are secure.	98.72(a)(11)

Failed to Cooperate with the Department Violations

Violation	Statute/Rule
Failed to cooperate with department audits and investigations and provide all requested documents	98.70(a)(6) 98.71(a)(1) 98.72(a)(5)

Class D Violations

Penalty: $3,000 up to $5,000 and/or up to revocation

Violation	Statute/Rule
Failed to deal honestly with members of the public and the Department	98.70(a)(15) 98.71(a)(1) 98.72(a)(17)
Failed to comply with an order of the Commission or Executive Director.	51.353(a) 98.90
Failed to pay the Department for a dishonored payment or processing fee.	51.210(c) 60.82
Instructor or instructor training provider instructed a student when the student or instructor exhibited signs of impairment from the use of an alcoholic beverage, controlled substance, drug, or dangerous drug, as defined in Texas Penal Code §1.07	98.70(b)(1) 98.71(a)(1)

TRD-202304700
Christina Kaiser
Interim Executive Director
Texas Department of Licensing and Regulation
Filed: December 12, 2023

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Texas Lottery Commission

Scratch Ticket Game Number 2563 "MEGA LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2563 is "MEGA LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2563 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2563.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ARMADILLO SYMBOL, BAT SYMBOL, BICYCLE SYMBOL, BLUEBONNET SYMBOL, BOAR SYMBOL, BUTTERFLY SYMBOL, CACTUS SYMBOL, CARDINAL SYMBOL, CHERRIES SYMBOL, CHILE PEPPER SYMBOL, CORN SYMBOL, COVERED WAGON SYMBOL, COW SYMBOL, COWBOY SYMBOL, COWBOY HAT SYMBOL, DESERT SYMBOL, FIRE SYMBOL, FOOTBALL SYMBOL, GEM SYMBOL, GUITAR SYMBOL, HEN SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, JACKRABBIT SYMBOL, LIZARD SYMBOL, LONE STAR SYMBOL, MARACAS SYMBOL, MOCKINGBIRD SYMBOL, MOONRISE SYMBOL, MORTAR PESTLE SYMBOL, NEWSPAPER SYMBOL, OIL RIG SYMBOL, PECAN TREE SYMBOL, PIÑATA SYMBOL, RACE CAR SYMBOL, RATTLESNAKE SYMBOL, ROADRUNNER SYMBOL, SADDLE SYMBOL, SHIP SYMBOL, SHOES SYMBOL, SOCCER BALL SYMBOL, SPEAR SYMBOL, SPUR SYMBOL, STRAWBERRY SYMBOL, SUNSET SYMBOL, WHEEL SYMBOL, WINDMILL SYMBOL, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $200, $500, $1,000 and $5,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2563 - 1.2D

PLAY SYMBOL	CAPTION
ARMADILLO SYMBOL	ARMADILLO
BAT SYMBOL	BAT
BICYCLE SYMBOL	BICYCLE
BLUEBONNET SYMBOL	BLUEBONNET
BOAR SYMBOL	BOAR
BUTTERFLY SYMBOL	BUTTERFLY
CACTUS SYMBOL	CACTUS
CARDINAL SYMBOL	CARDINAL
CHERRIES SYMBOL	CHERRIES
CHILE PEPPER SYMBOL	CHILE PEPPER
CORN SYMBOL	CORN
COVERED WAGON SYMBOL	COVERED WAGON
COW SYMBOL	COW
COWBOY SYMBOL	COWBOY
COWBOY HAT SYMBOL	COWBOY HAT
DESERT SYMBOL	DESERT
FIRE SYMBOL	FIRE
FOOTBALL SYMBOL	FOOTBALL
GEM SYMBOL	GEM
GUITAR SYMBOL	GUITAR
HEN SYMBOL	HEN
HORSE SYMBOL	HORSE
HORSESHOE SYMBOL	HORSESHOE
JACKRABBIT SYMBOL	JACKRABBIT
LIZARD SYMBOL	LIZARD
LONE STAR SYMBOL	LONE STAR
MARACAS SYMBOL	MARACAS
MOCKINGBIRD SYMBOL	MOCKINGBIRD
MOONRISE SYMBOL	MOONRISE
MORTAR PESTLE SYMBOL	MORTAR PESTLE
NEWSPAPER SYMBOL	NEWSPAPER
OIL RIG SYMBOL	OIL RIG

PECAN TREE SYMBOL	PECAN TREE
PIÑATA SYMBOL	PIÑATA
RACE CAR SYMBOL	RACE CAR
RATTLESNAKE SYMBOL	RATTLESNAKE
ROADRUNNER SYMBOL	ROADRUNNER
SADDLE SYMBOL	SADDLE
SHIP SYMBOL	SHIP
SHOES SYMBOL	SHOES
SOCCER BALL SYMBOL	SOCCER BALL
SPEAR SYMBOL	SPEAR
SPUR SYMBOL	SPUR
STRAWBERRY SYMBOL	STRAWBERRY
SUNSET SYMBOL	SUNSET
WHEEL SYMBOL	WHEEL
WINDMILL SYMBOL	WINDMILL
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2563), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2563-0000001-001.

H. Pack - A Pack of the "MEGA LOTERIA" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MEGA LOTERIA" Scratch Ticket Game No. 2563.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly 72 (seventy-two) Play Symbols. A prize winner in the "MEGA LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAYBOARDS 1 & 2: 1) The player completely scratches the CALLER'S CARD area to reveal 28 symbols. 2) The player scratches ONLY the symbols on both PLAYBOARDS that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line on either PLAYBOARD, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. TABLAS DE JUEGO 1 Y 2: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 28 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en las dos TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal en cualquiera TABLA DE JUEGO, el jugador gana el premio para esa línea. JUEGOS DE BONO: El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 72 (seventy-two) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 72 (seventy-two) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 72 (seventy-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 72 (seventy-two) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters

A. GENERAL: A Ticket can win up to eight (8) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARDS/TABLAS DE JUEGO: There will be no matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARDS/TABLAS DE JUEGO: At least fourteen (14) but no more than twenty-six (26) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on either PLAYBOARD/TABLA DE JUEGO play area.

E. PLAYBOARDS/TABLAS DE JUEGO: No identical Play Symbols are allowed on the same PLAYBOARD/TABLA DE JUEGO play area.

F. BONUS GAMES/JUEGOS DE BONO: Every BONUS GAME/JUEGO DE BONO Grid will match at least one (1) Play Symbol to the CALLER'S CARD/CARTA DEL GRITÓN play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "MEGA LOTERIA" Scratch Ticket Game prize of $10.00, $15.00, $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MEGA LOTERIA" Scratch Ticket Game prize of $1,000, $5,000 or $250,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MEGA LOTERIA" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MEGA LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MEGA LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 49,200,000 Scratch Tickets in Scratch Ticket Game No. 2563. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2563 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	5,412,000	9.09
$15	1,968,000	25.00
$20	1,968,000	25.00
$30	2,952,000	16.67
$50	984,000	50.00
$100	492,000	100.00
$200	108,240	454.55
$500	8,200	6,000.00
$1,000	2,460	20,000.00
$5,000	300	164,000.00
$250,000	20	2,460,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of
actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.54. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2563 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2563, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304707
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 13, 2023

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Scratch Ticket Game Number 2588 "$400 MILLION MEGA BUCKS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2588 is "$400 MILLION MEGA BUCKS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2588 shall be $100.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2588.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, STACK

OF CASH SYMBOL, DIAMOND SYMBOL, $150, $200, $300, $500, $1,000, $2,500, $50,000 and $5,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2588 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH

34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
STACK OF CASH SYMBOL	WIN$
DIAMOND SYMBOL	DBL
$150	ONFF
$200	TOHN
$300	THHN
$500	FVHN
$1,000	ONTH
$2,500	25HN
$50,000	50TH
$5,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten

(10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2588), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 015 within each Pack. The format will be: 2588-0000001-001.

H. Pack - A Pack of the "$400 MILLION MEGA BUCKS" Scratch Ticket Game contains 015 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 015 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$400 MILLION MEGA BUCKS" Scratch Ticket Game No. 2588.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$400 MILLION MEGA BUCKS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-three (83) Play Symbols. BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching prize amounts in the same BONUS Play Area, the player wins that amount. $400 MILLION MEGA BUCKS PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS, the player wins the prize for that number. If the player reveals a "STACK OF CASH" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "DIAMOND" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-three (83) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-three (83) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-three (83) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-three (83) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-eight (38) times.

D. GENERAL: The "STACK OF CASH" (WIN$) and "DIAMOND" (DBL) Play Symbols will never appear in any of the three (3) BONUS play areas.

E. BONUS: A Ticket can win up to one (1) time in each of the three (3) BONUS play areas.

F. BONUS: A Ticket will not have matching, non-winning Prize Symbols across the three (3) BONUS play areas.

G. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area.

H. BONUS: A non-winning BONUS play area will have two (2) different Prize Symbols.

I. $400 MILLION MEGA BUCKS: A Ticket can win up to thirty-five (35) times in the main play area.

J. $400 MILLION MEGA BUCKS: All non-winning YOUR NUMBERS Play Symbols will be different.

K. $400 MILLION MEGA BUCKS: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

L. $400 MILLION MEGA BUCKS: All WINNING NUMBERS Play Symbols will be different.

M. $400 MILLION MEGA BUCKS: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

N. $400 MILLION MEGA BUCKS: On all Tickets, a Prize Symbol will not appear more than seven (7) times, except as required by the prize structure to create multiple wins.

O. $400 MILLION MEGA BUCKS: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

P. $400 MILLION MEGA BUCKS: On winning and Non-Winning Tickets, the top cash prizes of $1,000, $2,500, $50,000 and $5,000,000 will each appear at least once, except on Tickets winning thirty-eight (38) times and with respect to other parameters, play action or prize structure.

Q. $400 MILLION MEGA BUCKS: The "STACK OF CASH" (WIN$) Play Symbol will never appear on the same Ticket as the "DIAMOND" (DBL) Play Symbol.

R. $400 MILLION MEGA BUCKS: The "STACK OF CASH" (WIN$) Play Symbol will win the prize for that Play Symbol.

S. $400 MILLION MEGA BUCKS: The "STACK OF CASH" (WIN$) Play Symbol will never appear more than one (1) time on a Ticket.

T. $400 MILLION MEGA BUCKS: The "STACK OF CASH" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

U. $400 MILLION MEGA BUCKS: The "STACK OF CASH" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

V. $400 MILLION MEGA BUCKS: The "DIAMOND" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

W. $400 MILLION MEGA BUCKS: The "DIAMOND" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

X. $400 MILLION MEGA BUCKS: The "DIAMOND" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

Y. $400 MILLION MEGA BUCKS: The "DIAMOND" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "$400 MILLION MEGA BUCKS" Scratch Ticket Game prize of $150, $200, $300 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $150, $200, $300 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$400 MILLION MEGA BUCKS" Scratch Ticket Game prize of $1,000, $2,500 or $50,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "$400 MILLION MEGA BUCKS" Scratch Ticket Game top level prize of $5,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "$400 MILLION MEGA BUCKS" Scratch Ticket Game prize, including the top level prize of $5,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$400 MILLION MEGA BUCKS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$400 MILLION MEGA BUCKS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,160,000 Scratch Tickets in Scratch Ticket Game No. 2588. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2588 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$150	550,400	9.38
$200	275,200	18.75
$300	137,600	37.50
$500	344,000	15.00
$1,000	34,600	149.13
$2,500	2,500	2,064.00
$50,000	21	245,714.29
$5,000,000	4	1,290,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.84. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2588 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2588, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304718
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 13, 2023

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Public Utility Commission of Texas

Notice of Intent to Implement a Minor Rate Change Under 16 Texas Administrative Code 26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 5, 2023, to implement a minor rate change under 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Application Livingston Telephone Company, Inc. for a Minor Rate Change Under 16 TAC §26.171, Tariff Control Number 55946.

The Application: On December 5, 2023, Livingston Telephone Company, Inc. filed an application with the Commission for approval to make a minor change in its rates to reduce the restoration charge for customers who may have had their service temporarily suspended for non-payment charges. The proposed rate changes will take effect on December 11, 2023. The estimated net decrease to Livingston Telephone's total regulated intrastate gross annual revenues due to the proposed changes is approximately $3,564. If the Commission receives a complaint(s) relating to this proposal signed by 5% or more of Livingston Telephone's customers to which this proposal applies prior to December 11, 2023, the notice will be docketed. The 5% threshold will be calculated based upon the total number of affected customers as of the calendar month preceding the Commission's receipt of the complaint(s). As of October 1, 2023, the 5% threshold equals approximately 141 customers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by January 3, 2024. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Com-

mission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 55946.

TRD-202304592
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 2023

♦ ♦ ♦


TEXAS

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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