

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §355.112, concerning Attendant Compensation Rate Enhancement, and §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs. The amendments to §355.112 and §355.723 are adopted without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5717). Therefore, the rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments to §355.112 and §355.723 is to ensure compliance with the 21st Century Cures Act, which added section 1903(l) to the Social Security Act to require all states to implement the use of electronic visit verification (EVV). Section 1903(l) requires that EVV be used for all Medicaid personal care services requiring an in-home visit by a service provider. EVV is a computer-based system that verifies that a service is provided and electronically documents information about the service visit such as the name of the individual who received the service, the name of the service provider, the date and time the service begins and ends, and the location at which the service was provided.

Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) providers currently bill both day habilitation (DH) respite using service codes that do not distinguish between in-home and out-of-home services. The amendments establish separate service codes for in-home and out-of-home DH and respite to allow HHSC to compare service claims for in-home DH and in-home respite with the information in the EVV aggregator regarding the provision of those services. Furthermore, the amendments establish multiple service codes for out-of-home respite based on the location in which the service is provided to allow HHSC to collect appropriate service cost and claims information. HHSC is currently working to transition HCS and TxHmL claims processing to the Texas Medicaid & Healthcare Partnership. The changes to service codes will be effective when that transition is complete.

COMMENTS

The 31-day comment period ended on September 21, 2020. During this period, HHSC received comments regarding the proposed amendments from one entity: Senior Helpers. A summary of the comments relating to the rules and HHSC's response follows.

Comment: The commenter stated that the current reimbursement rates fall short of providing adequate compensation to caregivers and urged that the rate be increased to at least \$22.00 per hour.

Response: This comment is outside the scope of the rule project; however, HHSC will conduct a public hearing in compliance with Texas Human Resources Code §32.0282 prior to the implementation of the new service codes. No changes were made to the rules in response to this comment.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6637



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR

INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.723

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 110. ATHLETIC TRAINERS

16 TAC §110.24, §110.25

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §110.24 and §110.25, regarding the Athletic Trainers Program, without changes to the proposed text as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6660). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 110 implement Texas Occupations Code, Chapter 451.

The adopted rules are necessary to implement House Bill (HB) 2059, 86th Legislature, Regular Session (2019). HB 2059 requires athletic trainers and other health care practitioners to complete a human trafficking prevention training course in order to renew their license. The Executive Commissioner of the Health and Human Services Commission (HHSC) approves human trafficking prevention courses, including at least one course that is

available without charge, and posts a list of approved courses on the HHSC website. The statutory provisions created by HB 2059 are located in Texas Occupations Code, Chapter 116. The adopted rules implement this training requirement and allow the training to count toward the required minimum continuing education for athletic trainers.

The adopted change to §110.24 was presented to and discussed by the Advisory Board of Athletic Trainers (Advisory Board) at its meeting on June 22, 2020. The Advisory Board did not make any changes to the proposed amendment. The Advisory Board voted and recommended that the proposed change to §110.24 be published in the *Texas Register* for public comment. Additionally, the Advisory Board discussed allowing the training to count toward continuing education requirements.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §110.24 by requiring athletic trainers to complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116 and to provide proof of completion as prescribed by the Department.

The adopted rules amend §110.25 by allowing an HHSC-approved human trafficking prevention training course to count toward continuing education requirements. The adopted rules would allow licensees to claim one clock-hour of credit for each clock-hour spent on the training 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 25, 2020, issue of the *Texas Register* (45 TexReg 6660). The deadline for public comments was October 26, 2020. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Athletic Trainers Advisory Board met on November 2, 2020, to discuss the proposed rules. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on December 8, 2020, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 451, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 451. No other statutes, articles, or codes are affected by the proposed rules.

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

Filed with the Office of the Secretary of State on December 22, 2020.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §66.15

The State Board of Education (SBOE) adopts an amendment to §66.15, concerning state adoption and distribution of instructional materials. The amendment is adopted without changes to the proposed text as published in the October 9, 2020 issue of the *Texas Register* (45 TexReg 7122) and will not be republished. The amendment addresses penalties for failure to comply with state law and rule governing review and adoption of instructional materials.

REASONED JUSTIFICATION: Rules in 19 TAC Chapter 66, Subchapter A, address the requirement for registers, procedures governing violations of statutes, and administrative penalties.

At the April 2020 SBOE meeting, SBOE members expressed concern about publishers making changes to adopted products without obtaining SBOE approval and asked staff to provide options to address this concern. At the June-July 2020 SBOE meeting, the Committee on Instruction discussed possible amendments to rules in Chapter 66 related to administrative penalties to address this issue. At the September 2020 SBOE meeting, the board approved a proposed amendment to 19 TAC §66.15 for first reading and filing authorization.

The adopted amendment adds new §66.15(f)(3) to impose stricter penalties for instructional materials containing factual errors if the errors occur due to updates to instructional materials and the publisher did not submit the proposed updates for review in accordance with requirements imposed by the SBOE.

The SBOE approved the proposed amendment for first reading and filing authorization at its September 11, 2020 meeting and for second reading and final adoption at its November 20, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will enable the amended rule to apply to publishers immediately and will support higher quality instructional materials for students. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began October 9, 2020, and ended November 13, 2020. The SBOE also provided an op-

portunity for registered oral and written comments at its November 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment: A community member stated that climate change should be addressed in the science TEKS.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent expressed opposition to including information about LGBTQ issues in the health education TEKS.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent stated that school districts should be allowed to choose whether to incorporate sex education into health curriculum.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent stated that sex education curriculum should be related to biology and follow traditional science.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent stated that sex education curriculum should be age appropriate.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent and a community member expressed support for abstinence education.

Response: This comment is outside the scope of the current rule proposal.

Comment: Two community members expressed support for including language that supports the needs of LGBTQ youth in the proposed health education TEKS.

Response: This comment is outside the scope of the current rule proposal.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §31.002, which defines open education resource instructional material; TEC, §31.003, which authorizes the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.023, which requires the SBOE to adopt a list of instructional materials that meet applicable physical specifications, contain material covering at least half of the applicable Texas Essential Knowledge and Skills (TEKS) in the student version and in the teacher version, are suitable for the subject and grade level for which the instructional material was submitted, and have been reviewed by academic experts in the subject and grade level for which the instructional material was submitted; TEC, §31.035, which allows the SBOE to adopt supplemental instructional materials that are not on the adopted list if the material covers one or more primary focal points or topics of a subject in the required curriculum, is not designed to serve as the only instructional material for the course, meets applicable physical specifications, is free from factual errors, is suitable for the subject and grade level for which the instructional material was submitted, and has been reviewed by academic experts in the subject and grade level for which the instructional material was submitted. The statute

requires the SBOE to identify the TEKS that are covered by the supplemental instructional material and requires the material to comply with the review and adoption cycle provisions; and TEC, §31.151(b), which authorizes the SBOE to impose a reasonable administrative penalty against a publisher who knowingly violates a requirement imposed on a publisher or manufacturer of instructional materials by TEC, §31.151(a), and ensure the penalty is of sufficient amount to deter a future violation.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§31.002, 31.003, 31.023, 31.035, and 31.151(b).

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: October 9, 2020

For further information, please call: (512) 475-1497



CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SEVERANCE PAYMENTS

19 TAC §105.1021

The Texas Education Agency (TEA) adopts an amendment to §105.1021, concerning severance payment reporting and reductions in Foundation School Program (FSP) funding. The amendment is adopted without changes to the proposed text as published in the October 16, 2020 issue of the *Texas Register* (45 TexReg 7373) and will not be republished. The adopted amendment removes obsolete language relating to recapture and updates a reference to Texas Education Code (TEC), Chapter 42, which was recodified by House Bill (HB) 3, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Section 105.1021 defines a severance payment and the requirements of the board of trustees of an independent school district when an amount paid to a superintendent on early termination of the superintendent's contract exceeds the amount earned by the superintendent under the contract as of the date of termination. It also describes when and how the terms of the severance payment are to be reported to TEA and that the district's FSP funding will be reduced by the amount that the severance payment to the superintendent exceeds one year's salary and benefits under the superintendent's terminated contract.

The adopted amendment implements HB 3, 86th Texas Legislature, 2019, by removing obsolete language in subsection (c)(2) that could potentially result in an incorrect recapture adjustment for some schools.

The adopted amendment also updates a cross reference to TEC, Chapter 42, in subsection (c)(3). HB 3 recodified TEC, Chapter 42, as Chapter 48.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 16, 2020, and ended November 16, 2020. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §11.201(c), which requires that the local school board of trustees that makes a severance payment to a superintendent to report the terms of the severance payment to the Texas Education Agency (TEA). It also requires TEA to reduce the district's Foundation School Program funding by the amount that the severance payment to the superintendent exceeds one year's salary and benefits under the superintendent's terminated contract.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.201(c).

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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Cristina De La Fuente-Valadez

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Texas Education Agency

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER R. ADVISORY COMMITTEES

25 TAC §37.350

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §37.350, concerning the Texas School Health Advisory Committee (committee).

The amendment to §37.350 is adopted with changes to the proposed text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6020) and will be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to review and update §37.350 in accordance with Texas Government Code, §2001.039 regarding Agency Review of Existing Rules. The amendment updates the statutory reference establishing the committee and clarifies committee composition, roles, and responsibilities.

COMMENTS

The 31-day comment period ended September 28, 2020.

During this period, DSHS received comments regarding the proposed rule from twenty-one commenters, including the Texas Counseling Association and the Texas School Counselor Association, and nineteen individuals. A summary of comments relating to the rule and DSHS's responses follows.

Comment: Regarding §37.350(d)(1)(E), multiple commenters requested retaining the original rule language to ensure school counselor representation on the committee. The commenters stated that school counselors are uniquely qualified to support the mission of the committee and should be guaranteed representation on the committee.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated that the proposed language does not align with the requirements of House Bill (H.B.) 18, 86th Legislature, Regular Session, 2019, which amended Texas Education Code, §28.004(d)(2), and separately lists "certified school counselors" as members of the local school health advisory council (SHAC). The commenters stated that the committee should align, to the best extent possible, with the structure and duties of the SHAC.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated that the proposed mental health professionals listed in the proposal should not be appointed to replace or supplant school counselors, as they do not hold the same credentials, training, or experience as school counselors.

Response: DSHS agrees and removes school psychologist, school social worker, and other school-based mental health professional from the rule.

Comment: Regarding §37.350(d)(1)(E), one commenter stated that the proposed changes to §37.350(d)(1)(E) do not follow the same pattern as the proposed changes to §37.350(d)(1)(A) and §37.350(d)(1)(B), as those individuals are licensed or certified by the State Board of Education and the Texas Board of Nursing. For §37.350(d)(1)(E), only school counselors are certified by the State Board for Educator Certification. The proposed additional individuals are not certified as school counselors.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated that the proposed titles "school social worker" and "school psychologist" do not exist in Texas rules or statutes, which could lead to confusion and should be removed.

Response: DSHS agrees and removes school psychologist, school social worker, and other school-based mental health professional from the rule.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated that the new Texas Essential Knowledge and Skills for Health Education specifically cite "school counselors" as resources for behavioral health and emotional growth and should be included on the committee. Inclusion of school counselors

on the committee will help ensure consistency as the committee works with SHACs.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated H.B. 18 directs SHACs to integrate "comprehensive school counseling programs" into health education to address physical and mental health concerns. The commenters stated that school counselors hold the knowledge and training on comprehensive school counseling programs.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), one commenter stated that "other school-based mental health professional" is vague and should be removed. The commenter also stated that substituting this individual for a school counselor does not align with H.B. 18.

Response: DSHS agrees and removes school psychologist, school social worker, and other school-based mental health professional.

Comment: Regarding §37.350(d)(1)(E), one commenter stated that if other behavioral health professionals are included in the committee, they could possibly be added to §37.350(d)(1)(F). Adding other behavioral health professionals to §37.350(d)(1)(E) could result in losing the voice and expertise of certified school counselors.

Response: DSHS agrees and changes the language in §37.350(d)(1)(E) to specify that only those working as school counselors with certification in school counseling may apply for membership in this category. Other mental health professionals may apply under §37.350(d)(1)(F) if they so choose.

The statement "report of committees' activities" is replaced with "report of committee's activities" for grammar construction in §37.350(m).

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §1001.0711 which requires a rule to establish a committee to provide assistance to DSHS in establishing a leadership role for DSHS in support for and delivery of coordinated school health programs and school health services. This amendment is also authorized by Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

§37.350. *Texas School Health Advisory Committee.*

(a) The committee. The Texas School Health Advisory Committee (committee) shall be appointed under and governed by this section.

(b) Applicable law. Texas Government Code, §2110.008, does not apply to a committee created under this section. The committee is subject to the Texas Health and Safety Code, §1001.0711, concerning the School Health Advisory Committee and the Texas Education Code, §38.104(c).

(c) Purpose. The purpose of the committee is to provide assistance in establishing a leadership role for the Department of State Health Services (department) in support for and delivery of coordinated school health programs and school health services. In addition, the committee is to review the analysis of the required student physical fitness assessment adopted by the Texas Education Agency (TEA) and develop recommendations as outlined in Texas Education Code, §38.104(c).

(d) Composition.

(1) The committee shall be composed of one representative from the Texas Department of Agriculture (TDA), appointed by the Commissioner of Agriculture; one representative from TEA, appointed by the Commissioner of Education; the department's School Health Program Coordinator or other department representative; and 17 members appointed by the Executive Commissioner of the Health and Human Services Commission (commission) which shall consist of:

(A) two individuals representing school superintendents, assistant superintendents, school principals, assistant principals, or school district board members;

(B) one registered nurse working in a school as a school nurse or school nurse administrator;

(C) five consumer members who are parents of school-age children with at least one parent of a child with special needs;

(D) one physician, or physician's assistant, or nurse practitioner currently providing health services to school-aged children;

(E) one representative working in a school as a school counselor with certification as a school counselor;

(F) four members representing a nonprofit or not-for-profit entity directly working with schools or school-aged children to support student learning, development, mental health, substance abuse, and health-related activities with no more than one member representing an institution of higher education;

(G) one representative working in a school as a physical educator or physical education administrator with certification as a physical educator;

(H) one representative working in a school as a health educator or health education administrator with certification as a health educator; and

(I) one representative working in the school setting as part of the district's school nutrition program.

(2) In an effort to build a committee reflective of the current Texas population, special consideration will be given to:

(A) race, gender, age, and ethnic diversity;

(B) urban, rural, and suburban diversity; and

(C) a broad statewide geographic representation whenever possible.

(3) Membership appointments shall include one alternate member for each appointed position. The alternate will automatically be appointed as a member if the designated appointee is unable or unwilling to fulfill that role; or, whenever there is a vacancy. The appointed alternate will perform the same duties and have the same privileges as the appointed member in fulfilling the unexpired term.

(e) Terms of office. The term of office of each member shall be four years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on July 31 of each year.

(2) A member whose term is expiring has the option to apply for appointment for one additional term.

(f) Officers. The committee members shall elect a presiding officer and an assistant presiding officer to begin serving a two-year term on August 1 of their term.

(1) Each officer shall serve until July 31 of their two-year term.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall act for the presiding officer during the presiding officer's absence and shall assume the office of presiding officer in the event of a vacancy.

(4) If the office of assistant presiding officer becomes vacant, it may be filled by a vote of the committee.

(5) A member shall serve no more than two terms as an officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(g) Meetings. The committee shall meet at least twice each year.

(1) A meeting may be called by agreement of the department staff and either the presiding officer or at least three members of the committee.

(2) The department shall make meeting arrangements and shall contact committee members to determine availability for a meeting date and place.

(3) Meetings shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least ten working days before the meeting.

(5) A simple majority of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(h) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term, is absent for more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three

consecutive committee meetings. If the absences are determined to be reasonable, the member shall remain on the committee.

(3) If a member is removed from the committee before the end of the member's term, the alternate appointee for the position will serve out the remaining portion of the term.

(4) The validity of an action of the committee is not affected by the fact that it is taken when grounds for removal of a member exist.

(i) Staff. The department shall provide administrative support for the committee.

(j) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any committee action must be approved with a quorum present and by a majority vote or consensus of the members present.

(2) Any committee recommendations must be adopted pursuant to a simple majority vote on a motion duly made and seconded.

(3) Each member shall have one vote.

(4) A member may not authorize another individual to represent the member by proxy with the exception of the TDA, TEA, and department representatives appointed by the commissioners of these agencies. The commissioners of these agencies may appoint alternates to attend and vote.

(5) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(6) Minutes of each committee meeting shall be taken by the department staff.

(A) After approval by the committee, the minutes shall be signed by the presiding officer.

(B) A copy of the minutes approved by the committee and signed by the presiding officer shall be posted to the department's website at dshs.texas.gov within 30 days of approval and signature. Committee members will receive minutes of each meeting at least five days before the following meeting.

(k) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall ask for volunteers and appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each of its meetings or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(l) Statement by members.

(1) The commission, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the commission, department, or committee.

(2) The committee and its members may not participate in legislative or advocacy activities in the name of the commission,

the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process. The committee will make recommendations per statutory requirements.

(m) Reports to commissioner of the department. The committee shall file an annual written report of the committee's activities to the commissioner according to department policy. The committee shall post the meeting dates of the committee and any subcommittees, meeting agendas, and meeting minutes on the department's website at dshs.texas.gov.

(n) Reimbursement for expenses. In accordance with the requirements set forth in the Texas Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) Each member who is eligible to be reimbursed for expenses shall submit to department staff the member's receipts for allowable expenses as determined by school health program guidelines, and any required official forms not later than 14 days after each committee meeting.

(4) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

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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Barbara L. Klein

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-7279

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TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN
SERVICES COMMISSION

CHAPTER 302. IDD-BH TRAINING

SUBCHAPTER A. MENTAL HEALTH FIRST
AID

26 TAC §§302.1, 302.5, 302.7, 302.9

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §302.1, concerning Purpose; §302.5, concerning Definitions; §302.7, concerning Mental Health First Aid Training Protocols; and

§302.9, concerning Local Mental Health Authority Responsibilities. The amendments to §§302.1, 302.5, 302.7, and 302.9 are adopted without changes to the proposed text as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6662). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to include Local Behavioral Health Authorities (LBHAs), in addition to Local Mental Health Authorities (LMHAs), in the mental health first aid training requirements and add language to ensure consistency between statutory and rule requirements. The language clarifies the role of the LMHA and the LBHA in providing the training, provides guidelines for the LMHA and LBHA, and aligns with statute.

COMMENTS

The 31-day comment period ended October 26, 2020. During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §1001.201-207 which authorizes HHSC to administer the Mental Health First Aid Program and sets forth program requirements.

The amendments affect Texas Government Code §531.0055 and Texas Health and Safety Code Chapter §§1001.201-1001.207.

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 21, 2020.

TRD-202005649

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: January 10, 2021

Proposal publication date: September 25, 2020

For further information, please call: (512) 656-6585



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 69. RESOURCE PROTECTION

SUBCHAPTER C. WILDLIFE REHABILITATION PERMITS

31 TAC §§69.43 - 69.52

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 26, 2020, adopted amendments to §§69.43

- 69.52, concerning Wildlife Rehabilitation Permits. Sections 69.43 - 69.47, 69.51, and 69.52 are adopted with changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4951). These rules will be republished. Sections 69.48 - 69.50 are adopted without change and will not be republished.

The changes to the rules as proposed are numerous, resulting from extensive public comment, especially from the regulated community.

The change to §69.43, concerning Definitions, would add definitions for "final disposition," "satellite rehabilitation facility," and "supervisory permittee," and retain the current definition for "volunteer."

The department has determined that because the rules as adopted contain log and reporting requirements, a distinction must be made between intermediate forms of disposition, such as transfers to other rehabilitation permit holders, and final disposition, in which rehabilitation efforts have ceased due to mortality, transfer, or release. Therefore, the definition of "final disposition" is "the terminal status of wildlife rehabilitation efforts due to transfer, retention, mortality, or euthanasia."

The definition of "satellite rehabilitation facility" is "a facility registered with the department and operated by a subpermittee under the supervision of a permittee." The department was persuaded by public comment that the proposed provision requiring all subpermittees to perform rehabilitation activities at the permittee's registered facility should be relaxed to allow a subpermittee to conduct activities at a registered location other than the permittee's registered facility. Therefore, a definition of that term is necessary for reasons of administration, compliance, and enforcement.

The definition of "supervisory permittee" is "a permittee who is responsible for the activities of the subpermittees listed on the permittee's permit and volunteers at the permittee's or subpermittee's facility or satellite facility, as applicable." Because the rules as adopted allow subpermittees to engage in permitted activities at locations other than the permittee's facility and impose recordkeeping and reporting requirements, it is necessary to create a distinction between permittees who operate their own facility and permittees with subpermittees who operate satellite facilities.

The definition of "volunteer" is being retained because the department, based on public comment, has been persuaded that volunteers play a critical role in many permittees' operations, so much so that the proposed prohibition on volunteers, if adopted, would have been problematic to the point of being impractical in light of the magnitude of rehabilitation activities currently being undertaken with aid of volunteers. Therefore, the department has determined that volunteers can be utilized, subject to additional provisions addressed later in this preamble.

The change to §69.44, concerning General Provisions, consists of several components. The change alters proposed subsection (a) by removing references to facilities registered with the department via a department-designated application, as the change to proposed subsection (b) sets forth a universal requirement for facility registration and that requirement need not be stated in more than one place.

The change to subsection (b) creates a facility registration provision that is applicable to both permittees and subpermittees, which is necessary because the rules as adopted allow a sub-

permittee to conduct rehabilitation activities at a satellite rehabilitation facility under the supervision of a permittee. The change also includes language relocated from proposed subsection (a) that stipulates the methodology for facility registration.

The change inserts new subsection (c) to allow subpermittees to possess sick or injured wildlife while not in the presence of the permittee, which is necessary to accommodate changes discussed elsewhere in this preamble that provide for subpermittees to operate satellite rehabilitation facilities and retrieve injured or sick wildlife while not in the presence of the supervisory permittee.

The change also inserts new subsection (d) to address volunteers. As mentioned previously in this preamble, the rules as proposed would have eliminated rehabilitation activities by volunteers. In response to public comment, the department has been persuaded to allow the continued use of volunteers, under certain conditions. The rules as adopted will allow permittees to utilize volunteers in rehabilitation activities, provided the permittee maintains a daily log of volunteer utilization and the permittee or a subpermittee is present (if the permittee or subpermittee is not present, volunteers would be limited to purely custodial activities such as feeding, watering, and cleaning). In this way, the department has a record of persons who came into contact with specific animals in cases where epidemiological contact tracing is necessary.

The change to proposed subsection (k) would: insert language in paragraph (2) to restrict the rehabilitation of white-tailed and mule deer to fawns only; require fawns accepted for rehabilitation to be released, transferred, or euthanized by the time they are no longer fawns; reword a provision prohibiting the removal of required tags from a living deer; prescribe reporting requirements in lieu of the proposed requirements; and provide for CWD testing as directed by the department. As proposed, the rules would have allowed for the rehabilitation of deer at any age. In concert with the proposed amendment to §69.52, concerning Release of Rehabilitated Wildlife, which would have required all releases of deer to occur on acreage enclosed by a fence of at least seven feet high, the intent of the department was to create an acceptable disease management risk with respect to the release of rehabilitated deer. Public comment from the regulated community indicated that finding suitable release sites would be problematic. The department has determined that restricting rehabilitation activities to fawns, requiring such fawns to be transferred, released, or euthanized by one year of age, and allowing their release only to sites within the county where they were first acquired or within five miles of the site where they were first acquired would reduce the potential for spreading CWD by means of rehabilitated deer, provided CWD testing is performed when directed by the department. The department considers the risk of free-ranging deer in areas where CWD has not been detected to contract CWD within the first few months of life to be relatively low, and requiring deer to be released to the vicinity of where they were found is not likely to introduce disease to an area where it does not already exist. Adult deer present a greater disease risk, so the removal of the seven-foot fence height requirement in §69.52 necessitates the additional requirement for deer to be transferred, released, or euthanized within the year of birth or the growth of adult pelage (hair). The change also rewords proposed subsection (k)(4) to clearly state that the removal of a required tag from a deer is an offense. Additionally, the change alters the reporting requirements in proposed subsection (k)(5) to provide for direct notification of the department's wildlife rehabilitation program coordinator in the event of a deer mortality. As

proposed, the provision prescribed the use of a department electronic application, which the department has subsequently discovered cannot be integrated at the present time with the desired function contemplated in the proposed rule. Finally, the change adds a provision to allow the department to require any deer to be tested for CWD, which the department believes is necessary to accommodate other changes within the subsection and provide additional assurance that CWD is not spread as a result of wildlife rehabilitation activities.

The change to proposed subsection (m) eliminates the proposed 72-hour retention limit for wildlife that has died or been euthanized, as well as the requirement for CWD testing of deer older than six months of age. Public comment has persuaded the department that wildlife rehabilitators are a significant source of specimens for research and education and should be allowed to hold deceased wildlife indefinitely for eventual use in those activities. The CWD testing requirement for deer older than one year of age is removed because it is no longer germane given changes that restrict rehabilitation activities to fawns, as discussed elsewhere in this preamble.

The change also adds new subsection (o) to liberalize provisions governing the acceptable methods for disposing of deceased wildlife. As proposed, the rules would have required deceased wildlife to either be transferred to a person authorized to receive it or disposed of in a Type 1 landfill. Public comment from the regulated community indicated that many rehabilitators have the independent ability to safely incinerate or inter deceased wildlife. The department has determined that such methods are acceptable and do not present a disease propagation risk, provided the activities are conducted in accordance with all applicable local, state, and federal law regarding carcass disposal and do not involve open pit or burn-pile disposal, which are not acceptable from a disease-management perspective.

The change to §69.45, concerning Permit Required, adds generic language to subsection (a) in order to accommodate changes made elsewhere in the rulemaking concerning volunteers, who, under the rules as adopted, are allowed under specific conditions to engage in rehabilitation activities without a permit. The change also removes the 48-hour retention limit for veterinarians holding wildlife for emergency care. Public comment persuaded the department that there are situations in which veterinarians may need to hold injured wildlife for longer than 48 hours, and because veterinarians are regulated at the state and local levels there is no need for a time limit.

Finally, the change would insert new subsection (c) to provide for the conduct of rehabilitation activities at satellite facilities by subpermittees. As discussed previously in this preamble, the rules as proposed would have restricted the conduct of rehabilitation activities by subpermittees to the registered facility of a permittee. Public comment indicated that the logistical implications of such a provision would have caused significant perturbations in the delivery of rehabilitation services, convincing the department to allow subpermittees under specific conditions to conduct rehabilitation activities at a registered satellite facility located at a physical location different from that of the supervisory permittee. The proposed rules were intended by the department to create a meaningful regulatory structure for the activities of subpermittees, an issue that has become increasingly problematic because of their large numbers, sometimes unknown locations, and variable facility conditions, caseloads, and activities. The department has concluded that the goal of the proposed rule can be achieved while allowing rehabilitation activities to be con-

ducted by a subpermittee at a location other than that of the supervisory permittee, but only under provisions that allow the department to direct, monitor, and document those activities. The proposed new provision would therefore provide for satellite facilities to be operated by subpermittees (limiting each subpermittee to one satellite facility and one supervisory permittee), require the facilities to be registered with the department, require the satellite facility to be in compliance with the facility standards of the subchapter as well as any permit provisions established by the department for the supervisory permittee, and any permit provisions established by the department specifically for the satellite facility, all of which is necessary to ensure that regulatory oversight of satellite facilities is consistent with that of facilities operated by permittees. Additionally, the new subsection would explicitly provide that a supervisory permittee who authorizes a subpermittee to conduct permitted activities at a satellite facility is responsible for the conduct of the subpermittee with respect to activities governed by the subchapter, require the supervisory permittee to visit each satellite facility no less frequently than every 120 days to verify compliance with the provisions of the subchapter. The department believes that if a permittee chooses to allow a subpermittee to establish a satellite facility under the permittee's supervision, the supervisory permittee should be liable for the subpermittee's actions with respect to activities governed by the subchapter. Additionally, the department has determined that it is necessary to restrict subpermittees to a single satellite facility under a single supervisory permittee for both reasons of administrative efficiency and because persons who desire to engage in rehabilitation activities at multiple locations have demonstrated a level of engagement that necessitates obtaining a permit in their name.

The change to §69.46, concerning Application for Permit, inserts language in subsection (c)(1) to include department-approved training courses other than those offered by International Wildlife Rehabilitation Coalition, the National Wildlife Rehabilitator's Association (the two largest national organizations dedicated to wildlife rehabilitation) as acceptable to meet the required training criteria for permit issuance. Public comment proved to the department's satisfaction that there are a number of organizations and entities in addition to the well-known national groups that offer viable and effective continuing education opportunities; therefore, the rule as adopted allows the department to consider such training.

The change to §69.48, concerning Permit Renewals, inserts language in subsection (b)(1) to include department training courses other than those offered by the International Wildlife Rehabilitation Coalition, the National Rehabilitator's Association as acceptable to meet the training requirements for permit renewal for the reasons previously stated in this preamble.

The change to §69.51, concerning Release of Rehabilitated Wildlife, modifies proposed subsection (c) to add a reference to subsection (e) to accommodate changes made to subsection (e) regarding release of white-tailed or mule deer and clarifies that department authorization for releases to fenced or enclosed areas that prevent the animal from leaving at will must be in writing. As discussed previously in this preamble, the department in response to public comment has made changes with respect to the release of rehabilitated white-tailed and mule deer. The change in this section alters proposed subsection (e) to make provisions governing the release of white-tailed and mule deer consistent with other changes as noted previously in this preamble. In addition to the changes discussed earlier, those changes to subsection (e) eliminate the requirement that

release sites be surrounded by a fence of at least seven feet in height and be registered with the department via an electronic application designated for that purpose. The change to the proposed text also requires release sites to be either in the county where the deer was discovered prior to intake or within five miles of the location where the deer was discovered prior to intake, for reasons discussed earlier in this preamble.

The change to §69.52, concerning Reports and Recordkeeping, makes a number of alterations related to changes discussed earlier in this preamble related to the use of volunteers and the conduct of rehabilitation activities at satellite facilities. The change would alter subsection (a) to include subpermittees in the applicability of requirements for a daily log of all activities, including the addition of qualifying text to the effect that the sex of an acquired animal is required only if it is possible to ascertain. The change to subsection (a) also includes clarified reporting requirements, to include a reference identifier assigned to acquired wildlife by the permittee or subpermittee, the RFID tag number assigned to deer, and more detailed information regarding final disposition. Public comment indicated that permittees use a variety of software to track the wildlife entering and leaving their operations. In lieu of imposing a standardized data format for reporting, the department instead is developing a process by which data can be imported in the permittee's native software application; however, the department notes that if this approach proves to be unwieldy or problematic, additional rulemaking may be necessary for purposes of administrative standardization and efficiency. The proposed rules would have required white-tailed deer and mule deer accepted for rehabilitation to be tagged with an RFID tag for purposes of disease management. The change to subsection (a) would clarify that the RFID number assigned to each deer must be recorded on the daily log, which is necessary for the department to be able identify the provenance of deer for contact tracing purposes in the event that CWD is detected in a mortality. Additionally, the change would require additional final disposition data for each animal, to include the cause of final disposition, the GPS coordinates of release sites, identification data for owner of the sites where releases occur, and the name, address, phone number, email address, and permit number (if applicable) of any person to whom wildlife is transferred, if wildlife is transferred. The department seeks to establish clarity as to the exact information required to allow the department to conduct efficacious contact tracing in the event that an epidemiological investigation must be conducted.

The change also adds new paragraph (a)(2) to establish a daily log requirement to document the use of volunteers. As discussed previously in this preamble, the department has been persuaded by public comment not to eliminate the use of volunteers in wildlife rehabilitation activities; however, the department must be able to monitor and track interactions between volunteers and regulated wildlife for purposes of disease management. The department has concluded that volunteers can be allowed to engage in rehabilitation activities provided the department is able to direct, monitor, and document those activities.

The proposed rule would have retained the annual reporting requirement stipulated in current rule; however, public comment has caused the department instead to adopt a quarterly reporting system to make administrative compliance easier for permittees. The change also introduces reporting requirements for subpermittees who operate a satellite facility, which is necessary because, as discussed elsewhere in this preamble, the rules as adopted allow subpermittees to operate satellite facilities. Finally, the change implements a single requirement that all regis-

trations, reports, and notifications required by the subsection be made via email to the administrator of the department's wildlife rehabilitation program. As proposed, the rules contained various provisions relating to the use of internet applications for reporting and notification purposes. The department has subsequently discovered this cannot be integrated at the present time with the desired function contemplated in the proposed rule.

In response to the emergence of CWD in both free-ranging and captive populations of indigenous species of deer over the last five years, the department has acted to implement CWD management and control strategies by rule with respect to the movement of deer held under various department permits. A major component of that strategy has been to implement regulatory identification, reporting, and recordkeeping requirements to make epidemiological investigations easier, more efficient, and more productive. As part of this continuing effort, the department has identified wildlife rehabilitation activities involving deer as an area of concern. The amendments therefore contain specific provisions regarding facility and CWD testing requirements for deer. Further informing this rulemaking is the impact and causality of the SARS-CoV-2 (COVID-19) pandemic, which has introduced additional dimensions of concern, since it originated as a wildlife disease before jumping to human populations. Because it is obvious that the possibility that disease outbreaks in indigenous wildlife could pose a threat to other indigenous wildlife, livestock, and human health and safety, the department has determined that it is both prudent and necessary to amend the rules governing wildlife rehabilitation to put a number of proactive measures in place to address that possibility and facilitate management and control activities should such a situation arise in the future, including provisions applicable to unpermitted individuals who are allowed to engage in permitted activities, to identify the specific facilities and places where permitted activities take place, the initiation of electronic reporting requirements (including a daily log), requirements regarding the release, retention, and disposition of rehabilitated wildlife, the use of regulated medications and biologicals, improvements to training and certification standards, and transfer of wildlife to other rehabilitators. The amendments make several repetitive, nonsubstantive changes throughout the rulemaking, such as replacing "permit holder" with "permittee," "rehabilitation" with "activities authorized under a permit issued under this subchapter," and so forth.

The rules as adopted are intended to function collectively to address issues and concerns relating generally to wildlife disease control and response, and specifically to the detection and management of chronic wasting disease (CWD), a neurodegenerative disease that is fatal to white-tailed and mule deer, which has been confirmed in multiple locations in this state in both captive and free-ranging herds. Additionally, the amendments effect housekeeping-type changes to standardize and modernize the rules, the majority of which were last amended in 1997. The department notes that references to subsections in this portion of the preamble are to provisions as published in the proposed rulemaking; as a result of the changes to the rules addressed previously in this preamble, those provisions have been redesignated as necessary.

The amendment to §69.43, concerning Definitions, adds a definition for "wildlife," alters the definition for "subpermittee," and eliminates the definitions of "release to the wild," "supervisory responsibility," and "transportation." The definition of "release to the wild" is superfluous, since the common and ordinary meaning of "release" is sufficient for the purpose of the rules and the various provisions of the subchapter prescribe the conditions and re-

quirements for the release of rehabilitated protected wildlife. The definition of "supervisory responsibility" is eliminated because the department is replacing it with a definition of "supervisory permittee," for reasons discussed earlier in this preamble with respect to changes regarding the use of subpermittees. The definition of "transportation" is eliminated because the department has determined that the plain and ordinary meaning of the word is sufficient for the purposes of the rules. The definition of "subpermittee" is altered to conform the definition with references to supervisory responsibility, which is necessary because the amendments define persons lawfully allowed to conduct permitted activities. Finally, the term "wildlife" is defined as "protected wildlife" for purposes of consistency. Parks and Wildlife Code, Chapter 43, Subchapter C defines and employs the term "protected wildlife," while the current rules use the terms "wildlife" and "protected wildlife" interchangeably. The alteration is intended to eliminate confusion. Under Parks and Wildlife Code, Chapter 43, Subchapter C, no person may collect, hold, possess, display, transport, release, or propagate protected wildlife for the purposes of rehabilitation without a permit issued by the department.

The amendment to §69.44, concerning General Provisions, consists of several actions. The amendment alters subsection (a) to require facilities where rehabilitation activities take place to be registered with the department. One of the critical components of effective disease outbreak response is to be able to quickly perform contact tracing, meaning the identification of the specific places that specific animals may have come into contact with other animals or people. In concert with other provisions of this rulemaking that impose recordkeeping and reporting requirements for certain subpermittees and volunteers, require registration of facilities, impose marking requirements for deer, the provisions allow the department to maintain a real-time inventory of persons, places, and animals, which eliminates both the impediment of incomplete data (because there is no daily reporting requirement under the current rules) and the burden of a time-consuming manual review of paper documentation in the event of the need for contact tracing. This approach has been proven to be quite effective in the efforts to manage the spread of CWD from and between deer breeding facilities.

Under current rules a permittee may designate subpermittees and allow subpermittees to supervise rehabilitation activities by unnamed volunteers at multiple locations unknown to the department. The provisions are almost 30 years old. Parks and Wildlife Code, Chapter 43, Subchapter C prohibits wildlife rehabilitation for profit, and at one time, the department sought to allow rehabilitators maximum latitude in obtaining and utilizing human resources. This approach has led to a proliferation of unnamed volunteers in unknown locations. This is extremely problematic from a disease management perspective, for a variety of reasons. When a disease outbreak occurs, it is important to quickly identify the origin of the outbreak, or "index case." From that point the movement of animals and people into and away from the index case (traceback and trace forward) must be identified. When there is no chain of documentation to follow, disease response and management is hampered if not stymied. The amendment to §69.44(b) requires all subpermittees to conduct activities either at a registered facility or a registered satellite facility. In concert with reporting and recordkeeping requirements, this allows the department in a disease emergency to quickly identify the people, places, and animals that have come into contact with each other.

The amendment to §69.44(c) makes nonsubstantive changes to references.

The amendment to §69.44(d) prohibits the commingling of domestic pets, livestock, exotic livestock, exotic fowl, or non-indigenous wildlife with animals being rehabilitated, which is necessary to reduce the probability that wildlife will transmit disease to or acquire disease from external sources.

The amendments to §69.44(e)- (g) make nonsubstantive changes to improve accuracy and clarity.

The amendment to §69.44(h) makes nonsubstantive changes and prohibits the conduct of rehabilitation activities on the same property as a deer breeding facility, which is already a provision of the rules under current subsection (d) but is being stated explicitly for purposes of clarity to emphasize the necessity of preventing the accidental spread of disease to confined populations.

The amendment to §69.44(i) makes nonsubstantive changes and creates a new requirement that requests to retain non-releasable wildlife (wildlife that cannot survive on their own) be accompanied by a statement from veterinarian that the animal cannot be released and the reasons why. The new provisions also stipulate that the department will not authorize the retention of an animal that because of a disease or condition poses a danger to humans, other animals, or itself. The department lacks the resources to evaluate an increasing number of requests to retain wildlife. Requiring a statement from a veterinarian will assist the department in evaluating each case. The amendment also eliminates current subsection (i)(2), a grandfather clause that is no longer applicable.

The amendment to §69.44 also alters current subsection (i) to specify that all medical treatment, including vaccinations, be performed in accordance with applicable laws governing the extra-label use of medications and biologicals. Veterinarians may prescribe medications and biologicals for animal uses not addressed in the product labelling of the medication or biological; however, such usage is regulated by federal law. The amendment clarifies that such regulation also applies to wildlife rehabilitation and rehabilitators.

The amendment to §69.44 alters current subsection (j) to prescribe the modalities of final disposition of wildlife. Current rules do not specify the destination for final disposition of mortalities that are not donated or transferred to other types of permittees for other purposes. Diseases can be spread by incomplete or inadequate disposal techniques such as shallow interment, interment in contact with groundwater resources, partial incineration, and so forth. Accordingly, the department believes it is prudent to require that all expired wildlife that cannot be transferred to another person permitted to receive the specimens be disposed of in a manner that prevents or mitigates disease transmission.

The amendment to §69.44 adds new subsection (k), which requires all permittees who rehabilitate deer to attach permanent identification to each deer. Permanent identification and the reporting and tracking of deer transfers are all critical components of epidemiological efficacy of department actions to manage CWD.

Finally, the amendment adds new subsection (p) to provide that the department may designate a manual process in lieu of any electronic application requirement of the subchapter if for whatever reason the electronic application is unavailable. The department recognizes that there may be circumstances under which technological systems may be unavailable and believes

it is prudent to provide for an alternative method of compliance by permittees.

The amendment to §69.45, concerning Permit Required, prohibits the rehabilitation of any wildlife by persons except as authorized under the subchapter. All wildlife resources are critical components of functioning ecosystems, as well as being the property of the people of the state, and the department has determined that as such, medical treatment of that wildlife should not be attempted by or entrusted to persons who do not possess adequate training, guidance, or regulatory oversight to do so. The department notes that this provision does not affect any person's legal ability, in accordance with existing rules, to possess nongame species that are not injured or sick. The amendment also eliminates a reference to a permittee's choice of consulting veterinarian and includes various nonsubstantive alterations and conforming changes necessitated by amendments to other sections.

The amendment to §69.46, concerning Application for Permit, incorporates provisions from current §69.47, concerning Qualifications, with modifications. Under current rules, the qualifications for applicants are enumerated in two sections (§69.46 and §69.47) and state that wildlife rehabilitation permits may be issued only to qualified individuals who are at least 18 years of age, provide letters of recommendation from two persons who are conservation scientists or game wardens currently employed by the department, licensed veterinarians, or permitted wildlife rehabilitators who have known the applicant for at least two years, and one of the following: completion of a training course offered by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association within the preceding three years; attendance at a national wildlife rehabilitation conference within the preceding three years; membership in a state or national wildlife rehabilitation organization; or a test score of 80 or above on a department-administered wildlife rehabilitation examination. The amendment places all provisions governing permit application and qualifications in a single section, with modifications. The amendment retains the minimum age requirement and requires applicants to have completed a training course offered by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association (plus changes discussed earlier in this preamble), but would eliminate the provisions allowing attendance at a national wildlife rehabilitation conference within the preceding three years or membership in a state or national wildlife rehabilitation organization to be options for initial permit issuance in lieu of the required training (they would, however, be acceptable for purposes of permit renewal). The department has concluded, in light of recent developments concerning wildlife diseases, that it is appropriate to professionalize the requirements for issuance of wildlife rehabilitation permits; therefore, the amendment requires certification for initial permit issuance and allows continuing education activities to be considered for permit renewals. The amendment also replaces the current standard of an 80 percent grade on a department test with a 100% standard. The department believes that permittees should know the rules governing wildlife rehabilitation and the rudiments of the activity, and further notes that applicants make take the test as many times as necessary to achieve a passing score.

The amendment to §69.47, concerning Qualifications, retitles the section as Refusal of Permit Issuance or Renewal; Review, which is necessary to make the title germane to the contents of the section. As noted previously in this preamble, the amendment removes the contents of current subsection (a) and relo-

cates them, with modifications, to §69.46, concerning Application for Permit. The amendment also corrects an erroneous reference to Parks and Wildlife Code, Chapter 88, replacing it with a reference to Chapter 43. Chapter 88 governs endangered, threatened, and protected native plants.

The amendment to §69.48, concerning Permit Renewals, establishes the criteria for permit renewal, which consist of an applicant satisfying one of three requirements: completion of a specified training course in wildlife rehabilitation, evidence of certification by an accepted professional association germane to wildlife rehabilitation, or attendance at a national wildlife rehabilitation conference within the previous three years. The department believes that continuing education and professional development are important components of efficacious wildlife rehabilitation efforts involving a public resource that should be required by rule.

The amendment to §69.49, concerning General Facilities Standards, establishes specific facility requirements for the rehabilitation of deer. As noted earlier in this preamble, CWD is a fatal neurological disease that affects and is transmissible by and between white-tailed and mule deer, among other species. Other department regulations governing the holding of deer in captivity and the human-caused movement of deer under department permits stipulate that deer held in captivity must be kept in enclosures that prevent both escape and contact with other susceptible species. To prevent the spread of CWD, the department believes it is prudent to impose this standard on deer being rehabilitated as well.

The amendment to §69.50, concerning Transfers, makes non-substantive changes and prohibits the transfer of deer to rehabilitators in other states. The interstate movement of CWD susceptible species is highly regulated at the federal and state levels, and the department sees potential risk of disease spread in allowing deer to be transferred to other states.

The amendment to §69.51, concerning Release of Rehabilitated Wildlife, makes nonsubstantive changes, clarifies that causing or allowing the release of wildlife is considered by the department to be the same thing as personally acting to release wildlife, imposes requirements for sites where deer are released after rehabilitation, and clarifies that the rules governing release of rehabilitated wildlife do not supersede applicable provisions of local, state, or federal law. Current rule prohibits a permittee from releasing wildlife likely to become a nuisance, a disease threat, or a depredation threat. Although a permittee is ultimately responsible for the disposition of all wildlife in possession, the department would like to clarify that release provisions are not limited to the personal actions of a permittee, but to any actions by any person under or at the direction of the permittee. As discussed elsewhere in this preamble, the department is concerned and has acted to impose a disease management strategy to prevent the spread of CWD in deer populations. The amendment applies the strategy to rehabilitated deer, specifying the reporting of release site data to the department, which is necessary to provide the minimum assurance that the department is able to conduct efficacious epidemiological investigations if necessary. Finally, the amendment clarifies that no provision in the section absolves any person from the requirements of applicable local, state, or federal law. Other governmental entities have various legal authorities to regulate the possession and movement of different animals, such as the Department of State Health Services with respect to rabies control, the Animal Health Commission for various communicable livestock diseases, and so forth. The department wishes to be abundantly clear that a rehabilitation per-

mit does not override or preclude any person's legal obligation to comply with such laws, when applicable.

The amendment to §69.52, concerning Reports, retitles the section as "Reports and Recordkeeping" to make the title of the section more accurate and creates a daily log requirement. In concert with other provisions of this rulemaking that govern the use of volunteers and restrict rehabilitation activities to permittees and subpermittees at registered facilities, the daily log allows the department to maintain a real-time inventory of persons and animals that have come into contact and the places and times where and when those contacts occurred, which eliminates both the impediment of incomplete data (because there is no daily reporting requirement under the current rules) and the burden of a time-consuming manual review of paper documentation in the event of the need for contact tracing. This approach has been proven to be quite effective in the efforts to manage the spread of CWD from and between deer breeding facilities, and the department believes that prevention of potential spread of CWD warrants requiring wildlife rehabilitators to comply with similar reporting and recordkeeping standards.

The department received 17 comments opposing adoption of all or part of the proposed amendments. Most of the comments took the form of lengthy discussions of multiple aspects of wildlife rehabilitation in general, whether germane to the substance of the rulemaking or not. Therefore, the department has synthesized the comments by category and responded as necessary. Those comments, accompanied by the department's response to each, follow.

Five comments opposed the proposed elimination of the use of volunteers and provided a variety of rationales for opposition. The department agrees that the elimination of the use of volunteers in rehabilitation activities would have introduced significant perturbations in rehabilitation activities and has made changes to allow the use of volunteers under specific circumstances.

Four comments opposed the proposed requirement that all rehabilitation activities conducted by subpermittees be undertaken at the registered facility of the permittee. The department agrees that the proposed provision would have introduced significant perturbations in rehabilitation activities and has made changes to allow subpermittees to conduct rehabilitation activities at a registered satellite facility under the supervision of the permittee, and to retrieve sick or injured wildlife without the permittee being present.

Five comments opposed the proposed provision that would have required subpermittees to become permittees within two years or cease rehabilitation activities. The department agrees with the comments and has made changes accordingly. The department is persuaded that prolonged or permanent subpermittee status can be beneficial to permittees and wildlife resources, provided compliance with the rules as adopted is maintained.

One comment opposed adoption and stated that coursework/training from organizations and entities other than the International Wildlife Rehabilitation Council and the National Wildlife Rehabilitation Association should be accepted by the department to satisfy the initial and continuing education requirements of the rules. The department agrees with the comment and has made changes accordingly.

One comment opposed adoption and stated that the supervisory responsibility of permittees over subpermittees should not be eliminated. The department disagrees that the rules as proposed would have eliminated the supervisory responsibilities of

permittees over subpermittees. No changes were made as a result of the comment.

One comment opposed adoption and stated that the training requirements contained in the proposed rules should be grandfathered and that requiring training courses rather than "evidence of staying current on wildlife care practices" would present a financial hardship to rehabilitators. The department disagrees with the comment and responds that one of the goals of the proposed rules was to professionalize the delivery of wildlife rehabilitation in Texas. By requiring evidence of acceptable training from established organizations and entities to be a condition for permit issuance, the department believes that the rules create a baseline level of competent effort that prevents amateurs and well-intentioned but untrained persons from engaging in wildlife rehabilitation. The department also notes that wildlife rehabilitation permits are not a right but a privilege. Wildlife resources are owned by the people of the state and the department has a statutory duty to ensure that the privilege of rehabilitating those resources is granted only to those able to demonstrate the ability to do so, represented by initial and continuing educational standards. The department also notes that engaging in wildlife rehabilitation is strictly voluntary and the permit is free; the department believes that requirement to obtain minimum accreditation or education is not burdensome. Finally, the department responds that there is no need to grandfather any of the training or continuing education standards created by the rules as adopted, as the implementation timeline for the rules precludes transitional conflict. No changes were made as a result of the comment.

Three comments opposed adoption and stated that the rules as proposed would result in a reduction in the number of rehabilitators, causing the general public to do their own wildlife rehabilitation, which will defeat the department's goal of documenting the movement of sick and injured wildlife through the rehabilitation process. The department disagrees with the comment and responds that it is illegal to engage in wildlife rehabilitation without a permit and that compliance with the rules as adopted will not be difficult for persons with a bona fide interest in wildlife rehabilitation. No changes were made as a result of the comments.

Two comments opposed adoption and stated that it is impossible to assign unique identifiers to every songbird and small mammal that is accepted for rehabilitation, that getting personal information from persons who bring in sick or injured wildlife is problematic, and that the recordkeeping and reporting requirements of the proposed rules are burdensome and unnecessary because the data is not used by the department. The department disagrees with the comments and responds that rehabilitation inherently requires the employment of some system to track individual wildlife from intake to final disposition; the department therefore doesn't believe such tracking is impossible. Additionally, the department responds that members of the public who bring sick or injured wildlife to a rehabilitator are obviously interested in the welfare of that wildlife and will provide the basic information required by the rules when requested; however, they cannot be forced to provide such information and the department realizes that fact. Finally, the department responds that in order to provide a more robust ability to conduct contact tracing in the event of disease investigations and ensure that public resources are possessed and treated in a systematic, humane, and biologically defensible manner during rehabilitation, the reporting and recordkeeping provisions of the rules as adopted are necessary and justified. No changes were made as a result of the comments.

One comment opposed adoption and stated that subpermittees who receive wildlife from a permittee for rehabilitation at a satellite facility should not be subject to the quarterly reporting requirements if the supervisory permittee does the reporting upon intake. The department disagrees with the comment and responds that the prevalent historical model for rehabilitation activities by subpermittees is the independent intake of wildlife by the subpermittee, subject to any limitations imposed by the department on the supervisory permittee. Attempting to implement a two-tiered system of satellite facility reporting predicated on whether wildlife is received from the supervisory permittee or someone else would create a non-linear, non-unique mixture of datasets that would require additional department resources to administer, maintain, and interrogate. The department believes that having a single reporting requirement applicable to all satellite facilities is efficient and effective and does not present insuperable difficulties to supervisory permittees. No changes were made as a result of the comment.

One comment opposed adoption and stated that the requirement for initial permit issuance of a test score of 100 on a department-administered test is unrealistic. The department disagrees with the commenter and responds that the test is open-book and an applicant may take the test repeatedly until achieving a test score of 100. The department believes the provision is an effective way of achieving minimum confidence that applicants are aware of the rules and statutes governing wildlife rehabilitation. No changes were made as a result of the comment.

One comment opposed adoption and stated that it is impossible to obtain the GPS coordinates identifying the location of discovery for every animal accepted for care. The department agrees that it may not be possible in every case to obtain GPS coordinates but believes it is important to require permittees and subpermittees to attempt to obtain the most accurate location information possible. No changes were made as a result of the comment.

One comment opposed adoption and stated that rehabilitators are not funded by the department yet are subjected to stifling regulations and requirements while performing a valuable public service. The department agrees the wildlife rehabilitators perform a public service, but notes that the decision to obtain a wildlife rehabilitation is strictly voluntary and should be made with the full understanding that the department does not and never has funded or offered to fund wildlife rehabilitation activities, has no obligation statutory or otherwise to do so, and has never implied such. The department additionally responds that the rules as adopted are not stifling and are intended to ensure that the public interest with respect to the possession of live wildlife resources is protected. No changes were made as a result of the comment.

One comment opposed adoption and stated that just because the rules have not been revised in 30 years doesn't make them wrong. The department agrees with the comment and responds that the length of time since the last revision of the rules is not in and of itself a justification for either retaining or modifying them. No changes were made as a result of the comment.

One comment opposed adoption and stated that the rules appear to treat wildlife rehabilitation as a for-profit activity. The department disagrees with the comment and responds that by statute and by rule the wildlife resources held under the provisions of the subchapter are at all times the property of the people of the state and clearly provide that it is illegal to engage in

wildlife rehabilitation in exchange for money or anything of value. No changes were made as a result of the comment.

One comment opposed adoption and stated that the rules constitute a punishment imposed on all rehabilitators to fix problems for a small minority that the department isn't investigating or revoking permits for. The department disagrees with the comment and responds that no aspect of the rules as adopted are or are intended to be punitive, and that the department investigates and takes all appropriate actions when violations of the rules occur. No changes were made as a result of the comment.

One comment opposed adoption and stated that the rules impose administrative burdens on small businesses and nonprofits. The department disagrees with the comments and responds that the rules impose administrative requirements on persons who choose voluntarily to obtain a free permit for the privilege of possessing a public resource for purposes of engaging in wildlife rehabilitation and do not regulate any business. No changes were made as a result of the comment.

One comment opposed adoption and stated that the rules would require subpermittees to obtain federal permits for the rehabilitation of birds. The department disagrees with the comment and responds that any federal requirements are independent of the rules as adopted, noting also that the rules as adopted expressly state that no provision of the subchapter shall be construed to relieve any person of any requirement imposed by federal law, such as requiring a federal permit to possess a bird protected under the Migratory Bird Treaty Act of 1918. No changes were made as a result of the comment.

One comment opposed adoption and stated that the identification requirements for deer constitute an unfunded mandate. The department disagrees with the comment and responds that although it is unclear what is meant by the term "unfunded mandate," the department does not and has never funded the wildlife rehabilitation activities of any person in this state and is under no obligation statutory or otherwise to do so. The decision to obtain a free wildlife rehabilitation permit and engage in activities involving the possession of a public resource is voluntary. No changes were made as a result of the comment.

One comment opposed adoption and stated that requiring a statement from a veterinarian attesting that an animal cannot be released is burdensome. The department disagrees with the comment and responds that as an ethical matter, wildlife that cannot be released should be euthanized unless there is a demonstrable scientific or practical benefit to be obtained, such as educational use. Therefore, a veterinary opinion provides absolute assurance to the department that any given animal is, in fact, unreleasable and is not being retained for reasons of sentimental attachment. No changes were made as a result of the comment.

One comment opposed adoption and stated that there are other efficacious modes of carcass disposal in addition to Type 1 landfills. The department agrees with the comment and has made changes accordingly, as noted earlier in this preamble.

One comment opposed adoption and stated that the training and testing requirements of the proposed rules be made optional, as they impose unnecessary costs on permittees, and that in lieu of the requirements, the rules "should require that the applicant works/volunteers under an experienced rehabilitator before being permitted." The department disagrees with the comment and responds that the department believes the education and training components of the rules are essential; persons entrusted

with the care of a public resource should be required to obtain some sort of training in providing that care. The department also notes there are a variety of low and no-cost continuing education opportunities available to interested persons and that in any case, the costs associated with continuing education are not unreasonable. Finally, the department notes that "experienced" rehabilitators do not become "experienced" in a vacuum, they are required under current rule to obtain training and education in order to be and continue to be permitted. No changes were made as a result of the comment.

One comment opposed adoption and stated that the requirements for release sites receiving deer were problematic. The department agrees with the comments and responds that changes have been made accordingly, as noted earlier in this preamble.

One comment opposed adoption and stated that permittees should not be required to maintain daily logs on a form provided or approved by the department but instead allowed to submit the daily log information "with the information listed in the logs without individual approval." The department disagrees with the comment to the extent that the meaning of the comment can be parsed and responds that the requirement to maintain and submit log information on a form supplied or approved by the department is intended to standardize the way data is recorded and submitted in order to make records uniform and easily searchable in the event investigations become necessary. No changes were made as a result of the comment.

One comment opposed adoption and stated that requiring permittees to record the time of final disposition is unnecessary. The department disagrees with the comment and responds that in the event that a criminal or epidemiological investigation becomes necessary, the exact date and time at which an act is alleged or claimed to have occurred are important. No changes were made as a result of the comment.

The department received two comments supporting adoption of the rules as proposed.

Organizations providing comments were All Things Wild Rehabilitation, Inc., Last Chance Forever, and Houston SPCA Wildlife Center of Texas.

The amendments are adopted under Parks and Wildlife Code, §43.022, 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 and authorizes the department to issue a permit to a qualified person to collect, hold, possess, display, transport, release, or propagate protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

§69.43. Definitions.

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

- (1) Education--Activities that encourage management and conservation of wildlife resources or that are intended to increase the public's awareness and understanding of aspects of wildlife biology.
- (2) Final disposition--The terminal status of wildlife rehabilitation efforts due to transfer, retention, mortality, or euthanasia.
- (3) Fostering--Using a captive animal to rear young animals of the same species.
- (4) Holding--Retaining in captivity.

(5) Human imprinting or human bonding--A dependency or fixation upon humans as parent substitutes or companions.

(6) Non-releasable animal--An animal which, after rehabilitation, is determined by the department to be unlikely to survive in the wild if released.

(7) Propagate--To allow animals to produce offspring.

(8) Rehabilitation--The temporary caring for injured, orphaned, or sick wildlife until such animals can be released to the wild.

(9) Satellite rehabilitation facility (satellite facility)--A facility registered with the department and operated by a subpermittee under the supervision of a permittee.

(10) Socialize--Using a captive animal to teach wild behaviors to juvenile animals of the same species.

(11) Subpermittee--A person authorized by a permittee to conduct activities governed by this subchapter.

(12) "Wildlife Protected" wildlife--as defined by Parks and Wildlife Code, Chapter 43, Subchapter C.

(13) Supervisory permittee--A permittee who is responsible for the activities of subpermittees listed on the permittee's permit and volunteers at the permittee's or subpermittee's facility or satellite facility, as applicable.

(14) Volunteer--An individual who is not a permittee or subpermittee and works with permitted wildlife in the presence of the permittee or subpermittee.

§69.44. *General Provisions.*

(a) Activities authorized by a permit issued under this subchapter shall be conducted only by the permittee and/or subpermittees named on the permit or volunteers in compliance with the requirements of this subchapter.

(b) Except as provided in subsection (c) of this section, activities authorized by a permit issued under this subchapter shall be conducted only at a rehabilitation facility or satellite facility registered with the department via an electronic application designated by the department for that purpose.

(c) A permittee or subpermittee may possess sick or injured wildlife while not at a registered facility or satellite facility only for the amount of time necessary to stabilize and transport the wildlife to a registered facility or satellite facility.

(d) A volunteer may engage in permitted activities if:

(1) the volunteer is identified on the daily volunteer log as required under §69.52 of this title (relating to Reports and Recordkeeping); and

(2) the supervisory permittee or a subpermittee is present. At any time that the supervisory permittee or a subpermittee is not present, volunteer activity must be limited to feeding, watering, cleaning of cages and enclosures, and other custodial activities that involve only incidental contact with wildlife.

(e) Wildlife held under the authority of a permit issued under this subchapter may not be sold, bartered, or exchanged for any consideration. A permit issued under this subchapter shall not authorize a person, firm, or corporation to engage in the propagation or commercial sale of wildlife.

(f) Wildlife held under the authority of a permit issued under this subchapter shall not be commingled with domestic pets, livestock, exotic livestock, exotic fowl, or non-indigenous wildlife.

(g) A permittee shall conduct rehabilitation in an environment which minimizes human contact and prevents human and domestic animal imprinting or bonding.

(h) Except for permitted educational purposes, wildlife possessed under a rehabilitation permit shall not come in contact with anyone other than the permittee and/or subpermittees, volunteers, licensed veterinarians, or the staff of licensed veterinarians.

(i) A permittee shall not allow the viewing, exhibit, or display to the public of animals possessed under a rehabilitation permit unless specifically authorized by permit provision.

(j) A permittee shall not conduct activities governed under this subchapter on the same property as a fur-bearing animal propagation facility or deer breeding facility unless specifically authorized in writing by the department.

(k) Non-releasable wildlife shall be euthanized except as provided by this subsection.

(1) Permission to retain non-releasable wildlife may be granted only to permittees who have at least three years' experience as a permitted wildlife rehabilitator.

(2) The department may permit the retention of non-releasable wildlife for approved educational, fostering, or socialization purposes, or for transfer to zoological, scientific, or educational permittees. Requests must be made in writing to the department and no transfer shall take place until the department has approved the request. A request to retain non-releasable wildlife under this subsection shall include a statement from a licensed veterinarian that the animal is non-releasable and the reasons why the animal is non-releasable. The department will not authorize the retention of an animal that because of a disease or condition poses a danger to humans, other animals, or itself.

(l) Permittees possessing non-releasable raptors shall band the raptors with markers supplied by the department.

(m) Wildlife rehabilitation of white-tailed deer and mule deer is restricted to fawns only. No permittee or subpermittee may accept or possess a white-tailed or mule deer that is in adult pelage (no spots). All white-tailed or mule deer received by a permittee shall immediately be identified by the attachment to the pinna of either ear of:

(1) a Radio Frequency Identification Device (RFID) button tag approved by the department; and

(2) a "dangle" type tag bearing the unique identifier assigned to the deer by the department.

(3) The RFID tag required by this subsection must have an associated 15-digit animal identification number conforming to the 840 standards of the United States Department of Agriculture, which number shall be reported to the department in accordance with the applicable provisions of §65.92 of this title (relating to Reports and Recordkeeping).

(4) It is an offense for any person to remove or allow the removal of a tag required by this subsection from a living white-tailed or mule deer.

(5) A permittee or subpermittee who transfers a white-tailed or mule deer shall notify the administrator of the wildlife rehabilitation program at least 24 hours but not more than 48 hours prior to and following the completion of the transfer.

(6) Deer must be released, transferred, or euthanized by the end of the calendar year in which they were born or at the time they grow adult pelage, whichever occurs first.

(7) The department may require any deer held under a permit issued under this subchapter to be tested for chronic wasting disease.

(n) All medical treatment, including vaccinations, shall be performed in consultation with a licensed veterinarian and in accordance with all applicable laws regarding extra-label use of medications and biologicals.

(o) Euthanized wildlife and wildlife that has died while under the care of a permittee shall be:

(1) transferred to a person authorized by law to receive such wildlife;

(2) disposed of in a Type 1 landfill; or

(3) interred or incinerated onsite in compliance with any applicable local, state, or federal law regarding animal carcass burial or disposal.

(4) Open-pit disposal and burn-pile incineration are prohibited.

(p) This subchapter does not apply to department personnel, or transport by animal control officers or peace officers in the performance of official duties.

(q) The department may temporarily waive any provision of this subchapter during a wildlife health crisis.

(r) The department may designate a manual process in lieu of any electronic application requirement of this subchapter if for whatever reason the electronic application is unavailable.

§69.45. *Permit Required.*

(a) Except as may be otherwise provided by this subchapter, no person may possess wildlife for purposes of rehabilitation unless the person possesses a valid permit issued under the provisions of this subchapter.

(b) Except as otherwise provided under Chapter 65, Subchapter B, of this title (relating to Disease Detection and Response), licensed veterinarians may hold, possess, and transport wildlife to provide emergency medical care or stabilization care until they are stabilized and able to be transferred, at which time the wildlife must be transferred to a permitted rehabilitator.

(c) A person may possess protected wildlife for rehabilitation purposes at a satellite facility, provided:

(1) the person is listed as a subpermittee on the valid permit of a supervisory permittee and possesses a copy of the valid permit at the satellite facility;

(A) the supervisory permittee has registered the facility with the department;

(B) the facility is in compliance with the facility standards set forth in §69.49 of this title (relating to General Facilities Standards) and any additional standards or requirements set forth in the permit provisions of the supervisory permittee; and

(C) the subpermittee engages only in the rehabilitation activities authorized by the department to be undertaken at the satellite facility, including but not limited to restrictions on numbers and kinds of animals, life stages, and any other restrictions deemed necessary by the department.

(2) A permittee who registers a satellite facility with the department shall be responsible for the conduct of the subpermittee at the satellite facility with respect to all activities governed under this

subchapter and applicable permit provisions and shall visit each satellite facility no less frequently than once per 120 days to verify that the satellite facility is compliant with the provisions of this subchapter and applicable permit provisions. The department may prescribe alternatives to physical visitation for permittees with a demonstrated history of compliance.

(3) The department will not authorize the registration of more than one satellite facility per subpermittee.

(4) No person may be a subpermittee for more than one permittee.

(d) No permittee shall change facility location or receive unauthorized species, or conduct unauthorized activities unless the permittee possesses an amended permit authorizing such activity.

(e) Permits issued under this section may be issued for any period of time not exceeding three years from the date of issuance.

§69.46. *Application for Permit.*

(a) An applicant for a permit under this subchapter must be at least 18 years of age.

(b) Applications shall be made on forms supplied or approved by the department. Incomplete applications will not be processed.

(c) Applications must be accompanied by:

(1) a copy of the certificate of completion, within the preceding three years, of a training course offered by the International Wildlife Rehabilitation Coalition, the National Wildlife Rehabilitator's Association, or other organization or entity approved by the department;

(2) a letter of recommendation from a licensed veterinarian and/or permitted wildlife rehabilitator with at least three years' experience as a permitted wildlife rehabilitator who has known the applicant for at least two years; and

(3) a test score of 100 on a department-administered wildlife rehabilitation examination.

(d) Permits for the taking or holding of federally protected species shall not be valid unless the permittee also possesses a valid federal permit authorizing possession of those species.

(e) Except for persons authorized to do so under the terms of zoological permits, no person holding a permit authorizing the propagation for sale of wildlife shall be authorized to rehabilitate those species.

§69.47. *Refusal of Permit Issuance or Renewal; Review.*

(a) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, or received deferred adjudication or been assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43;

(2) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony; or

(3) the Lacey Act (16 U.S.C. §§3371-3378).

(b) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded nolo contendere to, received deferred adjudication, or assessed an administrative penalty for an offense listed in subsection (a) of this section.

(c) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.

(d) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.

(e) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).

(f) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.

(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (g) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.

(4) The decision of the review panel is final.

§69.51. Release of Rehabilitated Wildlife.

(a) A permittee shall release all wildlife capable of surviving in the wild in accordance with the provisions of this section, unless specifically authorized in writing by the department to do otherwise.

(b) A permittee shall not release, or cause or allow the release of wildlife in such a manner or at such a location so that the released animals are likely to become a nuisance, a disease threat, or a depredation threat.

(c) Except as specifically authorized in writing by the department, releases shall not be made in or to fenced or enclosed areas that prevent the animal from leaving at will.

(d) Wildlife shall be released only to habitat appropriate for the species.

(e) No person may release or allow the release of white-tailed deer or mule deer held under the provisions of this subchapter unless the release site is either:

(1) within five miles of the location where the deer was discovered prior to intake; or

(2) within the county where the deer was discovered prior to intake.

(f) Permittees may not release wildlife on department property without the permission of the department.

(g) A permittee commits an offense if the permittee releases or effects the release of wildlife held under the provisions of this subchapter on property without having on their person the written permission of the landowner, lessee, or operator to release the wildlife on that property.

(h) Nothing in this section shall be construed to exempt any person from any applicable provision of local, state, or federal law.

§69.52. Reports and Recordkeeping.

(a) Each permittee and each subpermittee who operates a satellite facility shall maintain, on a form provided or approved by the department:

(1) a daily log of all animals acquired or received for rehabilitation. The daily log shall, at a minimum, consist of the following:

(A) the species and sex (if possible) of each animal acquired or received;

(B) the date and time that each animal was acquired or received;

(C) the name, address, phone number, and, if possible, an email address for each person from whom an animal is acquired or received;

(D) the approximate or exact geographical location where each animal was found before being acquired or obtained;

(E) a reference identifier assigned to the wildlife;

(F) the RFID tag number assigned to a white-tailed or mule deer; and

(G) final disposition data for each animal, including:

(i) the cause of final disposition;

(ii) the date and time of final disposition; and

(iii) the method and location of disposition, including but not limited to:

(I) GPS coordinates for any release location;

(II) the name, address, phone number, and email address of the landowner of a property where wildlife is released; and

(III) the name, address, phone number, email address, and permit number (if applicable) of any person to whom wildlife is transferred, if wildlife is transferred; and

(2) a daily log of all volunteers who engage in permitted activities at the permittee's facility. The daily volunteer log shall record:

(A) the first and last name of each volunteer;

(B) a valid phone number and email address for each volunteer;

(C) the date the volunteer arrived at the facility;

(D) the time the volunteer arrived at the facility; and

(E) the time the volunteer departed the facility.

(b) Each permittee and each subpermittee who operates a satellite facility shall complete and submit quarterly reports to the administrator of the department's rehabilitation program until the department designates an electronic application for that purpose, at which time the quarterly reports required by this section shall be filed via electronic application. The reports required by this section must be received by the department by January 15, April 15, July 15, and October 15 of each year.

(1) For permittees, the reports shall include the activities conducted at the permittee's registered facility by all individuals listed on the permit, not to include activities conducted by subpermittees at satellite facilities.

(2) For subpermittees who operate a satellite facility, the report shall include the activities conducted at the satellite facility.

(3) The quarterly reports required by this section must be filed even if no permitted activities took place during the quarterly period.

(c) The following shall be retained at the permitted facility and kept available for inspection by the department for a period of two years from generation:

- (1) copies of all reports required by this section;
- (2) the daily logs required by this section; and

(3) the written landowner permission to release wildlife required under the provisions of 69.51(g) of this title (relating to Release of Rehabilitated Wildlife).

(d) The registrations, reports, and notifications required by this subchapter shall be submitted via email to the administrator of the department's wildlife rehabilitation program until the department designates an electronic application for that purpose, at which time all reports and notifications shall be filed via the electronic application.

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 22, 2020.

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General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) adopts new §§705.101, 705.103, 705.105, 705.107, 705.301, 705.303, 705.501, 705.701, 705.703, 705.705, 705.901, 705.903, 705.1101, 705.1103, 705.1301, 705.1303, 705.1305, 705.1307, 705.1309, 705.1311, 705.1501, 705.1503, 705.1505, 705.1507, 705.1509, 705.1511, 705.1513, 705.1515, 705.1517, 705.1519, 705.1521, 705.1523, 705.1525, 705.1527, 705.1529, 705.1531, 705.1533, 705.1901, 705.1903, 705.1905, 705.1907, 705.1909, 705.1911, 705.1913, 705.1915, 705.1917, 705.1919, 705.1921, 705.1923, and 705.1925; and the repeal of §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011, 705.2101, 705.2103, 705.2105, 705.2107, 705.3101, 705.3102, 705.4101, 705.4103, 705.4105, 705.4107, 705.4109, 705.4111, 705.5101, 705.6101, 705.7101, 705.7103, 705.7105, 705.7107, 705.7109, 705.7111, 705.7113, 705.7115, 705.7117, 705.7119, 705.7121, 705.7123, 705.8101, and 705.9001 in 40 TAC Chapter 705, concerning Adult Protective Services. The rules, except for §705.1907, are adopted without changes to the proposed text as published in the September 11, 2020,

issue of the *Texas Register* (45 TexReg 6341) and will not be republished. Section 705.1907 is adopted with changes and will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rule changes is as follows:

First, these changes update the rules to reflect the current scope and authority of the Adult Protective Services (APS) program as a result of Senate Bill (SB) 200, 84th Legislature, R.S. (2015) and the resulting transfer of the former APS Provider Investigations program to the Health and Human Services Commission (HHSC). The rules in Title 40, Texas Administrative Code, Chapter 705 contained many terms and provisions that pertained to both the APS program and the former APS Provider Investigations program. The adopted changes make the rules applicable to only the APS program.

The adopted changes include copying the Employee Misconduct Registry (EMR) rules from 40 TAC, Chapter 711, Subchapter O, into the APS Chapter, 40 TAC Chapter 705, with minor updates to reflect the legislative transfer of the Provider Investigations program to HHSC. While the changes appear far-reaching, they simply involve moving the rules to the APS Chapter and making minor edits to reflect the current structure of the APS program. As the rules in Subchapter O apply to both the APS program at DFPS and the Provider Investigations program at HHSC, HHSC will be transferring the rules to Title 26 in a separate rule packet.

More substantive changes have been made to the definitions of abuse, neglect, and exploitation. Currently, Human Resources Code (HRC) section 48.002(a)(2),(3),(4) provides definitions of abuse, neglect and exploitation; HRC section 48.002(c) also gives APS authority to adopt definitions of abuse, neglect, and exploitation as an alternative to the definitions found in section 48.002(a). In FY2012, APS used this authority to expand its definitions in rule. While this expansion allowed APS to incorporate paid caretakers into its definitions, it also led to some overlap between definitions of physical abuse, emotional abuse, and neglect. This overlap caused confusion for staff when conducting investigations. The differing statute and rule definitions also caused some confusion for providers and the general public. In the adopted rules, APS has clarified and simplified definitions for abuse, neglect, and exploitation while still capturing the intent and mirroring the definitions found in statute.

Finally, adopted rule §705.1923 more specifically implements HRC section 48.102 (Reports of Investigations in Schools), which requires the adoption of rule concerning who receives APS investigation reports related to alleged maltreatment of an adult with a disability by school personnel.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that state agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). All sections of Chapter 705 were reviewed. The proposed rule review was published in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6381). DFPS determined that reasons for adoption of the sections continue to exist with the exception of §705.9001 (relating to What is the purpose of the pilot program?). The remaining rule sections are required to comply with statutory requirements and effectively operate the Adult Protective Services program. As such, the content was retained and reorganized for clarity and to better align with the practice and structure of the APS

program and its investigations. The adopted rule review is published in this edition of the *Texas Register*.

COMMENTS

The 30-day comment period ended October 11, 2020. DFPS reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. DFPS received comments from Disability Rights Texas (DRTx) and the Texas Council for Developmental Disabilities (TCDD). The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of the comments.

Comments concerning §705.101 (relating to How are the terms in this chapter defined?): DRTx and TCDD support the definition of caretaker to include a person who by act, words, or course of conduct has acted so as to cause a reasonable person to conclude that the person has accepted the responsibility for protection, food, shelter, or care for an alleged victim. DRTx commented that the expanded definition allows for APS to investigate and intervene in circumstances that on occasion were previously not addressed. TCDD commented that the expanded definition would further reflect TCDD's call for the State and other agencies to place a greater emphasis on safety in community living by appropriating and allocating sufficient resources for that purpose.

Response: The rule combines the definitions of paid caretaker into the caretaker definition as both caretaker and paid caretaker assume responsibility for the client and there is no need to distinguish based on monetary compensation. DFPS is adopting this rule without change.

Comments concerning §705.501 (relating to How are allegations prioritized?): DRTx commented that the criteria for the priorities are listed but not the timeframe in which an investigation is initiated (by a face-to-face interview). DRTx acknowledged that timeframes for priorities are listed on the DFPS website and requested their inclusion in rule in order to better inform the public about the investigatory process. TCDD requests the addition of specific timeframes for response to an allegation for Priorities 1-4, stating that this information is of overriding importance to individuals who may have been abused, neglected, or exploited.

Response: To clarify, it is not the face-to-face interview that initiates an investigation. The following explanation of when an investigation is initiated is located on the same webpage as the timeframes for face-to-face interviews, http://www.dfps.state.tx.us/Adult_Protection/Investigations_and_Services.asp: "The specialist initiates an investigation of all reports within 24 hours of receipt of the report by the department. Case initiation (also known as the 24-hour contact) is defined as contact with a person who has current and reliable information about the alleged victim's situation. The case initiation allows the specialist to gain further knowledge of the situation and determine whether immediate intervention is required." DFPS acknowledges that the commenters would like to see face-to-face timeframes in rule. DFPS respectfully declines to make the amendments the commenters suggest. DFPS is adopting this rule without change.

Comments concerning §705.1303, (relating to Does the designated perpetrator have the right to appeal?): DRTx commented that failure to inform the alleged victim of the outcome of the investigation denies the victim of their right to explore other due process actions. Additionally, DRTx commented that the alleged victim should be provided the same opportunity to appeal the

outcome of the investigation as the designated perpetrator is provided. TCDD similarly commented and pointed out that because the designated perpetrator's right to appeal is related to matters of employment, and is therefore civil in character, APS should follow the general model established in civil law by allowing the alleged victim to request an administrative review for a finding (appeal).

Response: During a meeting with representatives from DFPS on October 16, 2020, DRTx and TCDD commenters clarified that their concerns are centered on investigations that involve an alleged perpetrator.

In regard to notifying the alleged victim of the outcome of the investigation, current policy allows for a client to be notified of the case closure in person, by letter, by phone, or by informing another adult involved in the client's care (who is not a designated perpetrator) on the client's behalf, if the client lacks the capacity to consent to closure or is not available when contacted. The policy is silent on notifying the client of the investigative finding. DFPS will consider expanding the information provided with the case closure notification to include investigative findings and how to access the investigative report. In regard to allowing the alleged victim to appeal the outcome of the investigation and to request an administrative hearing, DFPS may consider the comment in a future rulemaking action.

Adding new rules not required by statute is outside of the scope of this rulemaking action. DFPS is adopting this rule without changes.

Comments concerning §705.1311 (relating to Who is notified of a confidential decision?): DRTx commented that there is no language in the rule that specifies who is informed of the original findings of the investigation. DRTx strongly recommends the addition of this step and that language be added to the rules to clarify that the alleged victim and their LAR, if any, are notified when the investigation is concluded, what the result of the investigation is, including information about how the individual can access the investigative report. TCDD agreed with the notifications recommended by DRTx with the addition of a notification about how to request an administrative review (appeal).

Response: In regard to who is informed of the original findings in the investigation, see the DFPS response to comments concerning §705.1303 (relating to Does the designated perpetrator have the right to appeal?). Additionally, DFPS will consider editing the case closure notification letter to include a copy to the client's legal authorized representative. DFPS is adopting this rule without changes.

Comments concerning §705.1907, relating to (Who has the right to obtain all or part of confidential case records maintained by DFPS?): DRTx requests the following language be added throughout the rule as it pertains to whom DFPS makes the case records or portions of case records available: "If the Protection and Advocacy System represents the victim or alleged victim or is authorized by law to represent the victim or alleged victim, DFPS is required to make available the case records and/or investigation records for a living or deceased APS client in accordance with Federal law." TCDD requested that previous explicit language regarding the authority of DRTx to access records be reinstated.

Response: Upon request and to the extent required by state or federal law, DFPS makes case records or portions of case records for an APS client (living or deceased) available after appropriate redactions to the client's Disability Rights Texas rep-

representative. DFPS agrees to add this clarification to the rule. DFPS is adopting this rule with changes.

Comments concerning §705.1923, relating to (Who receives copies of reports of investigations in schools?): DRTx recommended adding to this rule a section that DFPS informs the alleged victim (and the alleged victim's LAR, as appropriate) of the initiation of an investigation, the completion of an investigation, and the outcome of the investigation. Also, DRTx recommended adding that the alleged victim or the alleged victim's LAR has the right to appeal the outcome of the investigation and describing the appeal process. TCDD's comments were in agreement with those of DRTx with the addition of requiring DFPS to notify an alleged victim or the alleged victim's LAR when an allegation has been made (in cases in which the allegation is made by another individual).

Response: The comments received are outside of the scope of this section, which is limited to the distribution of copies of reports. DFPS is adopting this rule without changes.

SUBCHAPTER A. DEFINITIONS

40 TAC §§705.101, 705.103, 705.105, 705.107

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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Tiffany Roper
General Counsel
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SUBCHAPTER C. APS PROGRAM OVERVIEW

40 TAC §§705.301, §705.303

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They

also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER E. ALLEGATION PRIORITIES

40 TAC §705.501

This new rule is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER G. ELIGIBILITY

40 TAC §§705.701, 705.703, 705.705

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as

well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER I. FAMILY VIOLENCE

40 TAC §§705.901, §705.903

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER K. INVESTIGATIONS

40 TAC §§705.1101, §705.1103

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER M. RELEASE HEARINGS

40 TAC §§705.1301, 705.1303, 705.1305, 705.1307, 705.1309, 705.1311

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

40 TAC §§705.1501, 705.1503, 705.1505, 705.1507, 705.1509, 705.1511, 705.1513, 705.1515, 705.1517, 705.1519,

705.1521, 705.1523, 705.1525, 705.1527, 705.1529, 705.1531, 705.1533

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER S. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §§705.1901, 705.1903, 705.1905, 705.1907, 705.1909, 705.1911, 705.1913, 705.1915, 705.1917, 705.1919, 705.1921, 705.1923, 705.1925

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

§705.1907. Who has the right to obtain all or part of confidential case records maintained by DFPS?

(a) Upon request and to the extent required by state or federal law, DFPS makes the case records or portions of case records for a living APS client available after appropriate redactions to the following persons:

- (1) the APS client;
- (2) the court appointed guardian of an APS client;
- (3) an attorney, attorney ad litem, or other court appointed legal representative of an APS client;
- (4) the APS client's Disability Rights Texas representative;

(5) an alleged or designated perpetrator of abuse, neglect, or financial exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator; and

(6) a person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or financial exploitation. The person is only entitled to that portion of the investigation record that relates to that person's interview.

(b) Upon request and to the extent required by state or federal law, DFPS makes the case records or portions of case records for a deceased APS client available after appropriate redactions to the following persons:

(1) the legally appointed representative of the deceased APS client's estate;

(2) the parents of a deceased APS client with a disability, if parental rights were not terminated and no estate exists requiring the appointment of a legal representative for the deceased APS client, and either:

(A) the case records requested relate to events precipitating the death of the APS client; or

(B) DFPS determines that the case records should be made available in the interest of justice;

(3) a person who was guardian at the time of death of the APS client;

(4) the APS client's Disability Rights Texas representative;

(5) an alleged or designated perpetrator of abuse, neglect, or financial exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator; and

(6) a person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or financial exploitation. The person is only entitled to that portion of the investigation record that relates to that person's interview.

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SUBCHAPTER A. DEFINITIONS

40 TAC §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011

STATUTORY AUTHORITY

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family

and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER D. ELIGIBILITY

40 TAC §§705.2101, 705.2103, 705.2105, 705.2107

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER G. FAMILY VIOLENCE

40 TAC §705.3101, §705.3102

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER J. RELEASE HEARINGS

40 TAC §§705.4101, 705.4103, 705.4105, 705.4107, 705.4109, 705.4111

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER K. TRAINING AND EDUCATION

40 TAC §705.5101

This repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER L. RISK ASSESSMENT

40 TAC §705.6101

This repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §§705.7101, 705.7103, 705.7105, 705.7107, 705.7109, 705.7111, 705.7113, 705.7115, 705.7117, 705.7119, 705.7121, 705.7123

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER N. PUBLIC AWARENESS

40 TAC §705.8101

This repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repeal section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER O. PILOT PROGRAM

40 TAC §705.9001

This repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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