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 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §351.819, concerning the Behavioral Health Integration Advisory Committee; §351.831, concerning the Employment First Task Force; and §351.835, concerning the Advisory Committee on Qualifications for Health Care Translators and Interpreters, without changes to the proposed text as published in the November 22, 2019, issue of the Texas Register (44 TexReg 7101). The repeal will not be republished. HHSC also adopts without changes amendments to §351.805, concerning the State Medicaid Managed Care Advisory Committee; §351.821, concerning the Value-Based Payment and Quality Improvement Advisory Committee; §351.823, concerning the e-Health Advisory Committee; §351.827, concerning the Palliative Care Interdisciplinary Advisory Council; and §351.833, concerning the STAR Kids Managed Care Advisory Committee. The rules will not be republished. Section 351.837, concerning the Texas Autism Council, is adopted with changes to the proposed text as published in the November 22, 2019, issue of the Texas Register (44 TexReg 7101). The rule will be republished.

BACKGROUND AND JUSTIFICATION

In 2015, the Texas Legislature removed 38 advisory committees from HHSC that were established by statute and, by adopting Texas Government Code §531.012, authorized the Executive Commissioner to establish advisory committees by rule. The Executive Commissioner's advisory committee rules were effective July 1, 2016. Consistent with Texas Government Code §2110.008, the advisory committee rules designated an abolition date for advisory committees established under Texas Government Code §531.012 approximately four years from the date of the rules' effective date. Several of the advisory committees are set to expire December 31, 2019.

The repeals are necessary to terminate advisory committees that have expired or are abolished. The amendments are necessary to extend committees whose terms expire December 31, 2019, and whose work is not completed. In addition, the amendments for the Palliative Care Interdisciplinary Advisory Council and the STAR Kids Managed Care Advisory Committee are necessary to comply with statute.

COMMENTS

The 14-day comment period ended December 7, 2019.

During this period, HHSC received comments regarding the proposed rules from 18 commenters, including Texas Parent to Parent, Autism Society of Texas, Texas Association for Behavior Analysis Public Policy Group, Easterseals Coalition Serving Texas, and 14 individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Some commenters favored the amendments to §351.805, extending the State Medicaid Managed Care Advisory Committee to December 31, 2023.

Response: HHSC appreciates the comments; no change is necessary.

Comment: One commenter was not in favor of the repeal of §351.831, concerning the Employment First Task Force.

Response: HHSC declines to continue this rule. The Employment First Task Force was established by statute, Texas Government Code §531.0244. That statute expired, by its terms, September 1, 2017. Consequently, the rule pertaining to the Employment First Task Force is no longer needed and will be repealed.

Comment: Some commenters favored the amendments to §351.833, extending the STAR Kids Managed Care Advisory Committee to December 31, 2023.

Response: HHSC appreciates the comments; no change is necessary.

Comment: Several commenters favored the amendments to §351.837, extending the Texas Autism Council to December 31, 2023.

Response: HHSC appreciates the comments. HHSC will, however, revise the proposed amendments to extend the council until December 31, 2020, to prioritize optimal placement of relevant issues. In addition to the council, several other advisory committees currently address issues regarding autism, and HHSC will work to identify the most effective forum(s) for the council's issues. HHSC agrees with the commenters that the issues the Autism Council addresses are extremely important, and HHSC continues its commitment to providing the issues the attention they deserve.

1 TAC §§351.805, 351.821, 351.823, 351.827, 351.833, 351.837

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
Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule and to include in the rule a date of abolition. The amendment of §351.827 is consistent with Senate Bill 1731, §10, 85th Legislature, Regular Session, 2017, and the amendment of §351.833 is consistent with Texas Government Code §533.00254(b).


(a) Statutory authority. The Texas Autism Council is established in accordance with HHSC's general authority to establish committees under Texas Government Code §531.012(a).

(b) Purpose. The Texas Autism Council advises and makes recommendations to HHSC and the Executive Commissioner to ensure that the needs of persons of all ages with autism spectrum disorder and their families are addressed and that all available resources are coordinated to meet those needs.

(c) Tasks. The Texas Autism Council performs the following activities:

(1) makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee; and

(2) other tasks consistent with its purpose that are requested by the Executive Commissioner.

(d) Reporting requirements. The Texas Autism Council performs reporting activities assigned by Texas Human Resources Code §114.008.

(e) Abolition. The Texas Autism Council is abolished, and this section expires, on December 31, 2020.

(f) Membership.

(1) The Texas Autism Council consists of no more than 24 members.

(A) Each public member is appointed by the Executive Commissioner.

(B) Each ex officio member is appointed by the commissioner or executive head of the represented state agency.

(C) Each member must have knowledge of and an interest in autism spectrum disorder.

(D) Texas Autism Council membership is allocated as follows:

(i) The majority of public members are family members of persons with autism spectrum disorder.

(ii) A representative from each of the following state agencies will serve as an ex officio member:

(I) Texas Department of Aging and Disability Services;

(II) Texas Department of Family and Protective Services;

(III) Texas Department of State Health Services;

(IV) Texas Health and Human Services Commission;

(V) Texas Workforce Commission; and

(VI) Texas Education Agency.

(2) Except as necessary to stagger terms, each public member is appointed to serve a term of two years.

(3) An ex officio member serves in an advisory capacity only and may not:

(A) serve as an officer; or

(B) vote.

(g) Presiding officer.

(1) The Texas Autism Council selects a presiding officer from among its members.

(2) Unless reelected, the presiding officer serves a term of one year.

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 January 7, 2020.

TRD-202000040

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Effective date: January 27, 2020

Proposal publication date: November 22, 2019

For further information, please call: (512) 707-6101

1 TAC §§351.819, 351.831, 351.835

STATUTORY AUTHORITY

The repeals 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 Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule and to include in the rule a date of abolition. The amendment of §351.827 is consistent with Senate Bill 1731, §10, 85th Legislature, Regular Session, 2017, and the amendment of §351.833 is consistent with Texas Government Code §533.00254(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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Karen Ray
Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 707-6101

DIVISION 1. COMMITTEES

1 TAC §351.839

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts §351.839, concerning Nursing Facility Payment Methodology Advisory Committee. Section 351.839 is adopted without changes to the proposed
BACKGROUND AND JUSTIFICATION

The Centers for Medicare & Medicaid Services implemented a new payment model for Medicare Skilled Nursing Facilities effective October 1, 2019. Due to changes resulting from this implementation, the data HHSC uses to calculate the current Texas Medicaid reimbursement methodology for nursing facilities (NFs) will not be accessible through the current federal source after September 30, 2020. HHSC is using this opportunity to consider revisions to the Medicaid NF payment rate methodology.

The new section creates the Nursing Facility Payment Methodology Advisory Committee (NF-PMAC) to advise HHSC on the establishment and implementation of recommended improvements to the NF payment methodology and other NF reimbursement topics. By establishing the NF-PMAC, HHSC will benefit from stakeholder knowledge and expertise as HHSC considers possible changes to the NF payment methodology.

COMMENTS

The 31-day comment period ended December 30, 2019. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The new section 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, and 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 §531.012, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees and adopt rules governing such advisory committees in compliance with Chapter 2110 of the Texas Government Code.

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

Filed with the Office of the Secretary of State on January 9, 2020.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission

Effective date: February 1, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 424-6637

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8065, concerning Disproportionate Share Hospital Reimbursement Methodology, §355.8066, concerning Hospital-Specific Limit Methodology, and §355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care. The amendments are adopted without changes to the proposed text as published in the November 29, 2019, issue of the Texas Register (44 TexReg 7239), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The rule amendments describe new payment caps for the Disproportionate Share Hospital (DSH) and Uncompensated Care (UC) Medicaid supplemental payment programs. When combined, DSH and UC represent almost $5.5 billion in Medicaid payments for Texas hospitals. The programs are meant to reimburse hospitals that provide services to predominantly Medicaid and low-income patients. So, the allocation methodology among such providers should account for the relative amounts of Medicaid and low-income patients served, as well as the overall payments hospitals receive for those patients.

In Texas, two payment caps exist for hospitals that participate in DSH and UC. There is a federal payment cap, known as the final hospital-specific limit (final HSL), that is described in federal law. There is also a state payment cap, known as the interim hospital-specific limit (interim HSL), that HHSC may define. The state payment cap is calculated in the payment year for DSH and UC, but the federal payment cap is calculated two years after the payment year using updated data. HHSC linked the interim HSL to the final HSL so that there would be a limited chance that a recoupment would occur after the final HSL was calculated.

The federal payment cap has been the subject of ongoing federal litigation for several years. That litigation relates to the inclusion of payments from other insurance payors and Medicare when a Medicaid client also has other insurance or Medicare. HHSC will continue to monitor this litigation and examine if the Texas payment cap should change in response to the outcome of the federal litigation. However, HHSC is implementing a full offset methodology for the state payment cap. That means any payment for services provided to a Medicaid client from any source will be included as an offset to all appropriate Medicaid costs.

HHSC seriously considered two other options for the state payment cap before proposing this amendment. HHSC considered the approach recommended by the Medicaid and CHIP Payment and Access Commission (MACPAC), where the Texas payment caps would not contain either the costs or payments for a Medicaid client who also has other insurance or Medicare. HHSC also considered capping, in the aggregate, other insurance and Medicare payments at the Medicaid allowable cost. However, HHSC determined that including all Medicaid costs and all third-party payments provides a more appropriate measure of financial need given the purpose of the payment programs at issue.

HHSC met with and received feedback from stakeholders prior to publication of the proposal. After publication, HHSC evaluated both written comments and oral testimony that was received during a public hearing.

COMMENTS

The 31-day comment period ended December 30, 2019. During this period, HHSC received comments regarding the proposed rules from 15 commenters: Children's Hospital Association of Texas (CHAT), CHRISTUS Health
Community Health Systems (CHS), Community Hospital Corporation, Doctors Hospital at Renaissance Health System (DHR Health), HCA Healthcare (HCA), LifePoint Health, Parkland Health and Hospital System, Steward Health Care System, Teaching Hospitals of Texas (THOT), Tenet Healthcare, Texas Children’s Hospital, Texas Organization of Rural & Community Hospitals (TORCH), Universal Health Services, Inc., and University Medical Center of El Paso.

A summary of comments relating to the rules and HHSC’s responses to the comments follow.

Comment: Multiple commenters support the proposed state payment cap methodology. Specifically, several commenters wrote that they support HHSC’s proposal because it properly allocates scarce funds based on actual unreimbursed costs and that including all Medicaid costs and third-party payments provides the most accurate measure of the financial burden of treating low-income patients for hospitals and reduces the likelihood of recoupments. One commenter wrote that HHSC’s proposed policy aligns with state and federal policy requiring that Medicaid be the payor of last resort.

Response: HHSC appreciates and agrees with the feedback. No changes were made in response to this comment.

Comment: Three commenters proposed HHSC adopt a different methodology that would exclude Medicaid-secondary costs and payments, as recommended by the Medicaid and CHIP Payment and Access Commission (MACPAC) in June 2019.

Response: HHSC declines to adopt the MACPAC methodology at this time. The MACPAC approach was one of the two other options HHSC seriously considered before proposing this amendment. Medicaid is the payor of last resort and HHSC has determined that including all Medicaid costs and all third-party payments provides a more appropriate measure of financial need given the purpose of the payment programs at issue.

HHSC understands that there is proposed legislation that would adopt the MACPAC methodology. HHSC will continue to monitor the legislation and determine if there is a need for future rule amendments. No changes were made in response to this comment.

Comment: One commenter urged HHSC to adopt the Senate Bill (S.B.) 7 methodology that would include Medicare and other insurance payments up to the Medicaid allowable cost. The commenter also suggested that HHSC reconsider utilizing the proposed full-offset methodology because it will result in locking some hospitals out of DSH altogether, even if their final HSL would show a shortfall, because the state payment cap uses two-year-old data. The commenter added that once a hospital is locked out of the DSH program it will have no opportunity to access funds, even if recouped funds are redistributed, because they’re not part of the audit that calculates final HSLs.

Response: HHSC declines to adopt the S.B. 7 methodology. The S.B. 7 approach was one of the two other options HHSC seriously considered before proposing this amendment. Medicaid is the payor of last resort and HHSC has determined that including all Medicaid costs and all third-party payments provides a more appropriate measure of financial need given the purpose of the payment programs at issue. No changes were made in response to this comment.

Comment: Several commenters did not support a methodology that would exclude all costs and payments for Medicaid patients with commercial or Medicare coverage (the MACPAC methodology). The commenters wrote that excluding an entire segment of the Medicaid population from the state payment cap calculation diminishes the accuracy of HHSC’s ultimate goal to determine the amount of uncompensated care hospitals provided to Medicaid-eligible patients. Several commenters encouraged HHSC to utilize a more conservative interim method for allocating DSH payments, such as the proposed state payment cap, even if Congress adopts the MACPAC methodology for the annual audits.

Response: HHSC appreciates the feedback. No changes were made in response to this comment.

Comment: Several commenters did not support a methodology that would cap aggregate third-party payments at Medicaid allowable costs. The commenters wrote that capping aggregate payments at allowable costs would be neither as accurate nor as efficient as using HHSC’s proposed state payment cap method.

Response: HHSC appreciates the feedback. No changes were made in response to this comment.

Comment: Two commenters requested that, in the event HHSC adopts the full-offset state payment methodology, the DSH rule be amended to include self-reported Medicaid days associated with the costs and payments for the Medicaid-secondary patients in all DSH calculations.

Response: Thank you for the comment. HHSC had not contemplated this when making the proposed amendments but will take it into consideration during future rule amendments. No changes were made in response to this comment.

Comment: Several commenters recommended HHSC consider using claims based on discharge date rather than adjudication date for the state payment cap and related DSH program calculations.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: Several commenters recommended HHSC consider including charges and payments submitted after the 95-day filing deadline in the state payment cap calculation.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: One commenter requested that, in the event HHSC adopts the full-offset state payment methodology, HHSC implement a one-year transition period for hospitals locked out of a DSH payment to adjust for the reduction in revenue that was unforeseen when 2020 budgets were set. The commenter added that providing a transition period to such hospitals alleviates some of the problems inherent in the full-offset methodology.

Response: HHSC declines to make the suggested change. The discussion surrounding the state payment cap and the HSL has been ongoing for over a year. Aligning the state payment cap and the final HSL will limit recoupments, and it would be imprudent to continue using different calculations for the two payment caps.

Comment: One commenter requested HHSC remove TAC §355.8212(g)(2)(A)(iv) from the rule as large public hospitals no longer require adjustment to their Uncompensated Care hospital-specific limits or intergovernmental transfers (IGTs) made in the Disproportionate Share program.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.
Comment: Several commenters requested confirmation from HHSC that it will enforce the state payment cap rule for UC payments, or alternatively, requested that HHSC propose a rule to amend or remove the language in §355.8212(g)(2)(B) and allow stakeholders the opportunity to comment. Some commenters suggested HHSC enforce the rule as it’s written. However, two commenters suggested HHSC amend the rule to remove the cap because UC payments no longer reimburse hospitals for the same costs as DSH. One commenter requested clarification from HHSC on how it intends to enforce this rule.

Response: HHSC appreciates the feedback but declines to make the suggested changes. These comments are outside the scope of the proposed amendments.

Comment: One commenter suggested HHSC amend TAC §355.8212(g)(2)(A) so that the DSH credit is limited to only the amount transferred to HHSC by a large public hospital’s affiliated governmental entity to support the portion of DSH payments to hospital and private hospitals attributable to their inpatient and outpatient charity-care costs.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: Several commenters suggested HHSC limit the DSH IGT credit to the actual amount that is necessary to eliminate the reduction in large public hospitals’ UC entitlement. Some commenters wrote that the current DSH IGT credit provides a windfall for transferring hospitals at the expense of other participating Texas hospitals.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: One commenter proposed that HHSC limit the DSH credit to the amount of IGT that supported uninsured costs reimbursed in DSH.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: Multiple commenters requested HHSC remove the penalties under §355.8065(n) relating to hospitals withdrawing from the DSH program. These commenters also urged HHSC to define "participation in the DSH program".

Response: HHSC declines to make the suggested changes. These comments are outside the scope of the proposed amendments.

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8065, §355.8066

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; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on January 9, 2020.
TRD-202000076
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 1, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 424-6863

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8212

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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Proposal publication date: November 29, 2019
For further information, please call: (512) 424-6863

 TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

ADOPTED RULES January 24, 2020 45 TexReg 527
SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

The Texas Department of Agriculture (Department) adopts amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 30, Subchapter A, Division 1, §30.3, relating to Program Overview with changes to the proposal as published in the November 29, 2019, edition of the Texas Register (44 TexReg 7260). This rule will be republished.

The Texas Department of Agriculture (Department) adopts the repeal of Subchapter A, Division 3, §30.60, relating to the Disaster Relief (DR) Fund, and §30.61, relating to the Urgent Need (UN) Fund; and new Subchapter A, Division 3, §30.60 relating to the State Urgent Need (SUN) Fund, without changes to the proposal as published in the November 29, 2019, edition of the Texas Register (44 TexReg 7260). These rules will not be republished.

The repeal of §30.60 and §30.61 removes rules relating to the Disaster Relief (DR) Fund and the Urgent Need (UN) Fund, two funding categories in the Texas Community Development Block Grant program no longer administered by the Department. New §30.60 creates and implements rules related to the State Urgent Need Fund, which replaces the former disaster relief fund category. The new rules are related to the State Urgent Need Fund application cycle, eligibility requirements, and selection procedures. Amendments to §30.3 reflect the changes made as a result of the repeal and new rules.

The Department received one comment in support of the proposal from Madison Thomas, Economic Development Program Manager, Brazos Valley Council of Governments.

DIVISION 1. GENERAL PROVISIONS

4 TAC §30.3
The adoption is made under Texas Government Code §487.051, which designates the Department as the agency to administer the state’s community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

§30.3. Program Overview.

(a) Fund categories. TxCDBG Program assistance is available through the following seven fund categories.

(1) Community Development (CD) Fund provides assistance for public facilities, basic infrastructure projects such as sewer or water improvements, street and drainage improvements, and housing activities, or other eligible activities as specified by the Department.

(2) Texas Capital Fund (TCF) is designed to support rural business development, retention and expansion by providing grants and/or loans for real estate or infrastructure development, or the elimination of deteriorated conditions. TCF is composed of five programs:

(A) Real Estate Program provides grants and/or loans to purchase, construct, or rehabilitate real estate that is wholly or partially owned by a community and leased to a specific benefiting business for the purpose of creating or retaining permanent jobs in primarily rural communities;

(B) Infrastructure Development Program provides grants and/or loans for infrastructure development, such as construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs, for the purpose of creating or retaining permanent jobs in primarily rural communities;

(C) Downtown Revitalization Program (DRP) provides grants for public infrastructure to foster and stimulate economic development in rural downtown areas;

(D) Main Street Improvements Program is designed to aid in the prevention or elimination of blight and blighted areas and provides assistance to expand or enhance public infrastructure in historic main street areas; and

(E) Small and Microenterprise Revolving Fund (SMRF) is available to communities partnering with a non-profit organization to provide loans to local small businesses.

(3) Colonia Fund is available for projects in severely distressed unincorporated areas which meet the definition of a colonia. The Colonia Fund is divided into five programs:

(A) Colonia Fund Construction (CFC) program is available for eligible activities designed to meet the needs of colonia residents, such as water and wastewater improvements, housing rehabilitation for low and moderate income households, the payment of assessments levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement, and other improvements including street paving and drainage;

(B) Colonia Fund Planning (CFP) program provides assistance for planning activities that prepare colonia areas for needed water, sewer and housing improvements. Assistance is provided to gather information regarding demographics, housing, land use statistics, public facilities and public services;

(C) Colonia Economically Distressed Areas Program (CEDAP) provides assistance to colonia areas to connect to a water and/or sewer system project funded by the Texas Water Development Board Economically Distressed Area Program (TWDB EDAP);

(D) Colonia Self-Help Center Program, which is administered by the Texas Department of Housing and Community Affairs (TDHCA), provides assistance to low-income and very low-income individuals and families living in colonias to finance, refinance, construct, improve or maintain safe and suitable housing; and

(E) Colonias-to-Cities Initiative Program (CCIP) provides assistance for basic infrastructure considered necessary for a colonia area to be annexed by an adjoining city.

(4) Planning/Capacity Building (PCB) Fund provides assistance to conduct planning activities that assess local needs, develop strategies to address local needs, build or improve local capacity to undertake future community development projects, or that include other needed planning elements (including telecommunications and broadband needs).

(5) State Urgent Need (SUN) Fund is available for assistance and recovery following a disaster situation.

(6) Small Towns Environment Program (STEP) Fund provides financial assistance to units of general local government that are willing to address water and sewer needs through self-help methods via local volunteers.

(7) Fire, Ambulance & Services Truck (FAST) Fund provides assistance to rural communities for fire, ambulance, and similar emergency vehicle response needs.

(b) Fund allocations. Of the state’s annual CDBG allocation from HUD, the department allocates a certain percentage to each TxCDBG Program based on the needs of the state’s rural communities.
CDBG fund category. For specific fund allocations, refer to the department's current TxCDBG Action Plan.

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 January 13, 2020.

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Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Effective date: February 2, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 463-7476

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 44. BOVINE VIRAL DIARRHEA

4 TAC §44.1, §44.2

The Texas Animal Health Commission in a duly noticed meeting on December 10, 2019, adopted §44.1, concerning Definitions, and §44.2, concerning General Requirements, within a new Chapter 44. The sections within new Chapter 44 are adopted with changes to the proposed text as published in the September 27, 2019, issue of the Texas Register (44 TexReg 5461). The change to §44.1, concerning Definitions, corrects grammatical errors in the proposed rule text in §44.1(2) and (3). The rules will be republished. The change to §44.2, concerning General Requirements, provides additional clarification that the rule applies only to those sellers that knowingly sell cattle persistently infected with bovine viral diarrhea. The changes are made in §44.2(a). The rules will be republished.

BACKGROUND AND JUSTIFICATION

Bovine viral diarrhea (BVD) is an economically impactful communicable disease of cattle with a worldwide prevalence that is endemic in most states. BVD is caused by the bovine viral diarrhea virus, a Pestivirus. The major reservoir responsible for disease spread geographically is the persistent infection syndrome (BVDV-PI) seen in calves. BVDV can result in impacts to stocker and feedlot operations by causing immunosuppression and contributing to Bovine Respiratory Disease Complex, or “Shipping Fever.” This can lead to reduced feed conversion and weight gain, and increases in days on feed, morbidity, treatment cost, and mortality. In regards to cow/calf and dairy operations, all of these impacts may occur plus decreased conception rates, abortions, weak calves, and congenital defects.

The dam can be transiently infected during pregnancy and her calf become infected during development in the womb. If this infection occurs between days 40 and 120 of the pregnancy, the calf’s immune system may not recognize the BVD Virus as foreign, and no natural immunity is produced in the calf. The calf becomes persistently infected (PI), and produces large numbers of the virus for the remainder of its life. The calf may display a normal appearance with immunosuppression or may experience acute death, poor performance, or mucosal disease.

Texas stakeholders have indicated interest in addressing the disposition of known BVDV-PI animals. The TAHC convened a group of stakeholders to discuss the negative implications of the disease on the Texas cattle industry. Stakeholder groups represented at the meeting included Texas Southwest Cattle Raisers Association (TSCRA), Texas Cattle Feeder Association

ADOPTED RULES  January 24, 2020  45 TexReg 529
The commission may develop rules necessary to control significant disease risks. BVDV adversely affects both health and productivity. The losses due to transient infection are diarrhea, decreased milk production, reproductive disorders, increased occurrence of other diseases, and death. The losses from fetal infection include abortions; congenital defects; weak and abnormally small calves; unthrifty, persistently infected (PI) animals; and death among PI animals. Additionally, PI animals serve as a continuous reservoir of virus exposing pen mates and adjacent cattle to BVD virus. To provide Texas cattle some mitigation from the risk of exposure to PI cattle, Chapter 44, entitled “Bovine Viral Diarrhea” is being added.

HOW THE SECTIONS WILL FUNCTION:

Section 44.1 is for definitions used in this chapter and contains the following definitions: (1) Bovine Viral Diarrhea (BVD); (2) Bovine Viral Diarrhea Virus Persistently Infected (BVDV-PI) cattle; (3) BVDV Retest; (4) Cattle; (5) Commission.

Section 44.2 contains the primary element of a BVDV Program. Subsection (a) provides that BVDV-PI cattle are restricted from sale unless a potential buyer is notified in writing on or before the time of sale that the cattle are persistently infected.

Subsection (b) provides that cattle that originally test positive but later are determined by confirmatory test to be transiently infected, only, are not subject to the disclosure requirements of this rule.

Subsection (c) provides that the Commission will establish a BVDV program review working group with the interested stakeholders that will meet on an annual basis to determine the need for enhanced rules or continuation of current rules.

FISCAL NOTE

Mrs. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

The 30-day comment period ended October 28, 2019.

During this period, TAHC received rule comments from the Texas and Southwestern Cattle Raisers Association (TSCRA) and four individuals. Of the five comments received, and to the extent the TAHC could determine, one commenter opposed adoption, three commenters supported adoption, and one commenter did not indicate support or opposition. A summary of comments relating to the rules and TAHC’s responses follows:

Comment: One commenter stated animals that are BVDV positive must be reported as tested by veterinarians and a follow-up mechanism is needed so a buyer can determine the seller knowingly disposed of a BVDV persistently infected animal.

Response: TAHC will take the recommendation under advisement for future rulemaking, if necessary. The rule requires the seller of a known BVDV-PI animal to notify the buyer of the persistent infection on or before the time of sale. The TAHC will not be involved in testing and test results will not be reported to the TAHC. No changes were made as a result of the comment.

Comment: One commenter recommended that animals tested utilizing a pooled sample should sell with a status of “from a test-positive pool/group” or from a “test-negative pool/group”.

Response: TAHC will take the recommendation under advisement for future rulemaking, if necessary. The rule as published requires the seller of a known BVDV-PI animal to notify the buyer of the persistent infection on or before the time of sale. This requirement applies to all animals in a pooled sample unless an animal from the pooled sample is individually BVDV retested and the retest results are negative. No changes were made as a result of the comment.

Comment: One commenter was concerned the rule creates a state policy that sellers shall not sell BVDV-PI cattle, even unknowingly, and that requiring written disclosure on the day of sale is going to place an undue burden on the local commission company. The individual commented that it should be sufficient if the auctioneer announces the BVDV-PI status.

Response: The commission disagrees with the comment and respondsthat notification is required for cattle with positive results on a BVDV antigen detection test that are not retested, or that have a positive result on a BVDV retest. If the owner has not BVDV tested the cattle, the status is unknown. The rule does not require testing, it requires disclosure of BVDV test-positive animals. However, TAHC has no issue with including language regarding a seller that knowingly sells BVDV-PI animals in the rule if it helps clarify the concerns of the regulated community and has made the changes accordingly.

Regarding the written disclosure concerns, the TAHC agrees a commission merchant or other person acting as an agent of the seller should announce the BVDV-PI status prior to the sale of any known positive animal and this verbal announcement is sufficient for prospective buyers. However, the agency also believes, given the common practice of purchasing multiple animals and commingling animals, that the seller’s agent must share the written notification with the ultimate buyer of the BVDV-PI animal. No changes were made as a result of the comment.

Comment: One commenter asked for additional information regarding the required forms of animal identification and whether pooled samples for PCR or Virus Isolation are an acceptable negative test, and, if so, the maximum number of samples that can be pooled together for a test.

Response: The commenter will be advised that this rule does not require identification; however, pursuant to existing 4 TAC §43.2 and §50.3, certain cattle are required to have TAHC approved official permanent identification. Pooled ELISA and PRCA samples are acceptable tests and the sample submitter should follow the test label directions or contact the testing laboratory directly for guidance regarding the maximum number of samples that can be submitted for a pooled test. This will be addressed directly with the individual commenter and other producers and organizations as part of stakeholder outreach. No changes were made as a result of the comment.

Comment: The Texas and Southwestern Cattle Raisers Association commented that the rule simply requires cattle producers to provide written disclosure to a purchase of an animal that is determined to be persistently infected with BVD. This improvement will allow cattle producers to make well-informed decisions.
and reduces the risk of unintentionally exposing cattle to BVD, especially during pregnancy.

Response: TAHC respectfully agrees. No changes were made as a result of the comment.

STATUTORY AUTHORITY

The new §44.1 and §44.2 within Chapter 44 are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.046, entitled "Rules" "[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter."

Pursuant to §161.112, entitled "Rules" the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

The adopted rules do not affect other sections or codes.

§44.1. Definitions.

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

(1) Bovine Viral Diarrhea (BVD) - Bovine viral diarrhea is a viral disease of cattle that is caused by the bovine viral diarrhea virus (BVDV).

(2) BVDV Persistently Infected (BVDV-PI) Cattle--Any cattle with positive results on a BVDV antigen detection test (e.g., ELISA [enzyme-linked immunosorbent assay], PCR [polymerase chain reaction], or BVDV immunohistochemistry [IHC]) that either are not retested, or that have a positive result on a BVDV retest.

(3) BVDV Retest--A subsequent test for BVDV using an antigen detection test (e.g., ELISA [enzyme-linked immunosorbent assay], PCR [polymerase chain reaction], or BVDV immunohistochemistry [IHC]).

(4) Cattle--All dairy and beef animals (genus Bos).


§44.2. General Requirements.

(a) A seller that knowingly sells BVDV Persistently Infected Cattle must disclose the Bovine Viral Diarrhea Virus Persistently Infected status in writing to the buyer prior to or at the time of sale.

(b) Cattle that initially test positive to a BVDV antigen detection test may be administered a BVDV retest. If the retest results are negative, the cattle are considered to have been transiently infected (not persistently infected) and are not covered under this rule.

(c) The Commission shall establish a BVDV Program Review Working Group consisting of members from the cattle industry, veterinary profession, veterinary diagnostic laboratory, veterinary college, extension service and agency representatives. The working group shall annually review the BVDV control program and make recommendations to the Commission on amendments to program components or operation, and on whether or not the program should be continued.

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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Mary T. Luedeker
General Counsel
Texas Animal Health Commission
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Proposal publication date: September 27, 2019
For further information, please call: (512) 719-0718

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.13

The Texas Historical Commission (Commission) adopts new §16.13 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code (TAC), relating to Historic Sites. The rule is adopted with changes to the proposed text published in the August 16, 2019, issue of the Texas Register (44 TexReg 4273) as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division (HSD). This rule will be republished.

The rule is in response to the passage of HB 1422 (for Texas Government Code §2175.909) that authorizes agencies with curatorial collections and an officially adopted deaccession policy to sell deaccessioned items under the State Surplus Property program. It requires that all proceeds from the sale of deaccessioned collection items be deposited to a dedicated agency account "for the care and preservation of the agency's qualifying collection."

HSD currently follows the deaccession policy outlined in the HSD Collections Management Policy and 13 TAC §29.5, Disposition of State Associated Collections. HSD staff are seeking to formalize the provisions of Texas Government Code §2175.909 as they relate specifically to the final disposition of deaccessioned historic furnishing and fine arts collections managed by HSD.

There were no comments received during the posting period.

Section 16.13 of TAC Title 13, Part 2, Chapter 16, relating to Historic Sites, is adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.106, which allows the Commission to operate or grant contracts to operate concessions on the grounds of historic sites; Texas Government Code §442.072(c), which allows the commission to enter into agreements; and Texas Government Code §§442.101(a), 442.101(b), and 442.101(c), which allow the Commission to adopt policies and procedures by rule to contract for services necessary to carry out its responsibilities regarding historic sites.
Texas Government Code §§442.072(c), 442.101(a), 442.101(b), 442.101(c), and 442.106 allow the commission to contract for services, and specifically for concessions, necessary to carry out its responsibilities regarding historic sites. No other statutes, articles, or codes are affected by this new rule.


(a) Ownership. The Commission is responsible for the management of archeological, archival, architectural, historic furnishing, and fine arts collections associated with historic sites overseen by the Commission. The Commission is granted authority over these collections by this section and §29.7 of this title (relating to State Associated Collections).

(b) Governance. Statutory and administrative authority over state-owned collections that are managed by the Commission is established in Texas Natural Resources Code §§191.051, 191.058, 191.091, and 191.092; Texas Government Code §§442.007, 442.075, and 2175.909; and in Chapters 26 and 29 of the Texas Administrative Code. Operational and procedural requirements related to the care and management of state-owned collections overseen by the Commission are outlined in the Commission's Collections Management Policy (CMP).

(c) Deaccessioning. The Commission recognizes the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. The decision to deaccession state-associated held-in-trust objects and collections is the responsibility of the Commission and is governed by this section and §26.5 of this title (relating to Antiquities Advisory Board).

(d) Final disposition of deaccessioned collections. Following confirmation that a collection object is not subject to any conditions established at the time of acquisition that may affect its disposition and that there is sufficient documentation to assure clear title to the object, a deaccessioned collection object will be disposed of in accordance with this section. All efforts will be made to contact the original donor to provide notification of pending collections disposition. In accordance with U.S. income tax policy, the Commission is not able to return deaccessioned objects to their original donors or donors' estates.

(1) Transfer or exchange. A deaccessioned collection object may be offered for transfer or exchange to another public institution within the State of Texas. Any such transfer or exchange will occur only on the written understanding that the object must remain within the public domain for a period of ten years. Recipient institutions will incur all transportation costs, unless otherwise agreed, and are expected to provide appropriate preservation and/or exhibit facilities.

(A) Qualified institution. Recipient institutions must have an established collections policy. The collection object(s) being transferred should fall within the recipient institution's scope of collections and the objects should be candidates for exhibition or study within the institution.

(B) Object title. Title to deaccessioned objects will be transferred along with the deaccessioned collection(s) to the recipient institution. In the event that the recipient institution is unwilling or unable to appropriately maintain the transferred collection(s) for the requisite ten years, title will revert back to the Commission and the Commission will assume responsibility for managing the objects' final disposition.

(2) Sale. If a deaccessioned collection object cannot be transferred or exchanged, it may be sold as a means of disposition, preferably by public auction, in consultation with the Texas Facilities Commission and following the provisions outlined by Texas Government Code §2175.909 (relating to Sale of Certain Historic Property; Proceeds of Sale).

(A) Coordination with the Texas Facilities Commission (TFC). The Commission will work with the TFC to ensure that all sales of deaccessioned collection items will be most advantageous to the state under the circumstances. The Commission will also provide the TFC all documentation necessary for verification that the deaccession of the item is appropriate under the Commission's written policy governing the care and preservation of the collection. The Commission will report any sale to the TFC, including a description of the property disposed of, the reasons for disposal, the price paid for the property disposed of, and the recipient of the property disposed of.

(B) Vendor qualifications. When selecting a vendor to sell the deaccessioned collection(s) by competitive bid, auction, or direct sale to the public, the Commission must publish a Request for Qualifications (RFQ) to ensure that the sale is conducted by a qualified vendor. Selection of the vendor should be the most advantageous to the state under the circumstances.

(C) Appraisal. Objects whose estimated fair market value could potentially exceed $500.00 must be appraised by a qualified, independent appraiser. Objects whose estimated fair market value could potentially exceed $25,000.00 must be appraised by two separate qualified, independent appraisers.

(D) Dedicated account. The Commission shall create a dedicated fund in the general revenue fund for the deposit of any money resulting from the sale of deaccessioned items. The Commission must ensure that money in the fund is appropriated only for the purposes prescribed by Texas Government Code §2175.909(f) including the care and preservation of the Commission’s qualifying collection.

(3) Assignment to other historic site operations. If a deaccessioned collection object cannot be transferred or exchanged, it may also be made available for other operational purposes within the Commission. The deaccessioned collection object may be used for interpretive programming, exhibition props, restoration of another collection item, or similar purposes.

(4) Destruction. Disposal of a collection object by destruction is the final recourse and is permitted under the following circumstances:

(A) all reasonable efforts were made to dispose of the object through other means;

(B) the object is environmentally hazardous and poses a danger to other collections or staff; and

(C) the object has no residual heritage, preservation, or market value to the Commission.

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 January 8, 2020.

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Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: January 28, 2020
Proposal publication date: August 16, 2019
For further information, please call: (512) 463-7948

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TITLE 16. ECONOMIC REGULATION
PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION
CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.23; Subchapter D, §60.40, and Subchapter I, §60.306; new rule Subchapter D, §60.36; and the repeal of Subchapter I, §60.302, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the October 25, 2019, issue of the Texas Register (44 TexReg 6178). The adopted changes are referred to herein as "adopted rules." The adopted rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation, and Chapter 53, Consequences of Criminal Conviction.

The adopted rules implement House Bill (HB) 1342, 86th Legislature, Regular Session (2019). HB 1342 amends Texas Occupations Code, Chapter 51, to provide the Texas Commission of Licensing and Regulation (Commission) and the Executive Director of the agency the authority to issue restricted licenses to persons within the Department's Air Conditioning and Refrigeration and Electricians programs. Further, HB 1342 amends Chapter 51 to state that a person whose license has been revoked for failure to pay an administrative penalty is eligible to reapply once the penalty has been paid in full, or the person is paying the administrative penalty under a payment plan with the Department and is in good standing with respect to that plan.

The adopted rules also implement HB 1899, 86th Legislature, Regular Session (2019). HB 1899 amends Texas Occupations Code, Chapter 108, to require mandatory denial or revocation of licensure for certain health care professionals.

The adopted rules also make several non-substantive organizational and clean-up changes.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §60.23 to include the addition of subsection (b)(4), which implements Texas Occupations Code §51.357, as enacted by HB 1342, §2. This addition makes it clear that the Commission and the Executive Director have the authority to issue restricted licenses in accordance with Texas Occupations Code, Chapter 51, Subchapter G.

The adopted rules amend §60.23(b)(5) to better align the rule text with the requirements of Texas Occupations Code, Chapter 53, relating to the consequences of criminal conviction. The adopted changes include a reference to deferred adjudication missing from the existing rule and replace the reference to offenses carrying the possibility of confinement in a state or federal facility with "an offense identified in Texas Occupations Code, §53.021."

The remaining adopted amendments to §60.23 are non-substantive and represent organizational and clean-up changes.

The adopted rules add new §60.36 (a) - (c) to implement HB 1342, §1, by stating that a person whose license has been revoked for failure to pay an administrative penalty may reapply once the person has either paid the penalty in full, or is paying the administrative penalty under a payment plan with the Department and is in good standing with respect to that plan. The adopted new subsection (c) provides a definition for "good standing" for purposes of the section.

The adopted rules add new §60.36(d) which is not a new provision but has been moved to the new rule from its former place at §60.40(c)(1). This change was made for organizational purposes and is not substantive.

The adopted rules add new §60.36(e) to implement Texas Occupations Code §108.054 and §108.055, as enacted by HB 1899, §8. New §60.36(e) simply states that a health care professional subject to mandatory denial or revocation by Texas Occupations Code §108.052 or §108.053, respectively, may reapply or seek reinstatement pursuant to Texas Occupations Code, Chapter 108, Subchapter B.

The adopted rules amend §60.40 to include the repeal of subsection (c). As mentioned above, the adopted rules move subsection (c)(1) of this rule to new adopted §60.36. Subsection (c)(2) has been removed, as it is no longer necessary in light of adopted §60.36.

The repeal of §60.302 is adopted because the rule is redundant in light of the adopted changes to §60.306, summarized below.

The adopted changes to §60.306(a) and (b) implement Texas Occupations Code §51.358(c) and (d), as enacted by HB 1342, §2. Sections 51.358(c) and (d) create a new type of contested case under the Administrative Procedure Act. Section 51.358(c) states that upon the expiration of a restricted license, there is a rebuttable presumption that the applicant is entitled to an unrestricted license. In order to retain restrictions on a license upon renewal, the Department must determine, pursuant to §51.356(d), either that: the applicant failed to comply with any condition imposed on the license, the applicant is not in good standing with the Department, or issuing an unrestricted license to the applicant would result in an increased risk of harm to any person or property. The adopted changes to §60.306(a) and (b) include a reference to this new type of contested case.

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 October 25, 2019, issue of the Texas Register (44 TexReg 6178). The deadline for public comments was November 25, 2019. The Department received comments from 11 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated opposition to the proposed rules, stating, "If a person is competent at his craft he would not need a restricted license. It is not fair to the journeymen and apprentices that have completed the training to become competent craftsmen and would be a liability to the TDLR I think in the long run."

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rules' intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not possess the requisite skill, experience, and competence to
hold an electrical or air conditioning and refrigeration license. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated opposition to the proposed rules, claiming that the provisions regarding restricted licenses will add liability exposure for small businesses. The commenter did not elaborate further.

*Department Response:* The Department appreciates the comment. The proposed rules simply implement the restricted license provisions of HB 1342 and do not reflect a policy decision by the Commission or Department. It is not possible for the Department to determine whether or in what form the implementation of HB 1342 would result in increased liability for any business. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated opposition to the proposed rules, claiming that "Up to this point most people think that a person with a license has been vetted by the state and may allow them to do work thinking they are trustworthy and free of criminal convictions."

*Department Response:* The Department appreciates the comment. However, the Department commonly issues licenses to persons with some degree of criminal history if the criminal offense is unrelated to the particular profession, or if the Department finds that the person has been rehabilitated. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked whether a person with no education or training in the field would be eligible for a restricted license.

*Department Response:* No. A person who has not met all of the conditions for licensure will not be eligible for a restricted license. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated approval of the proposed rules. The commenter stated that he or she was from outside of Texas and was not eligible for a license via reciprocity. The commenter said that the restricted license would help him or her work on electrical projects in Texas when needed.

*Department Response:* The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rules’ intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not meet the requirements for licensure in Texas. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter expressed approval of the proposed rules, and thanked the Department for the opportunity to share his opinion.

*Department Response:* The Department appreciates the comment. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked the Department to state the purpose of a restricted license, to provide examples of persons who would need a restricted license, and to give examples of potential restrictions.

*Department Response:* The Department responded to the commenter directly. The Department pointed the commenter to the provisions of HB 1342, which provide the information sought by the commenter. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated opposition to the proposed rules, stating that they are "accommodation to the underachievers."

*Department Response:* The Department appreciates the comment. The proposed rules simply provide an implementation of HB 1342 and are not intended to accommodate persons who do not possess the qualifications for licensure. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked for information on how to become a testing center.

*Department Response:* The Department responded to the commenter directly. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked whether the proposed rules would be applicable to registered air conditioning and refrigeration technicians.

*Department Response:* Yes. The proposed rules would allow the Commission or Executive Director to issue a restricted license to a registered air conditioning and refrigeration technician. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter inquired about the application requirements for a restricted license, and asked what scope of work a restricted license would cover.

*Department Response:* There are no application requirements for a restricted license. A person seeking a particular license, or renewal thereof, would apply in the regular fashion. In the event that the Commission or Executive Director saw fit to issue the person a restricted license instead of denying the application, the Commission or Executive Director would place reasonable restrictions on the license. The restrictions could, in theory, limit the scope or location of the license holder’s practice. See Texas Occupations Code §51.357. The Department did not make any changes to the proposed rules in response to this comment.

**COMMISSION ACTION**

The Department staff recommended that the Commission adopt the proposed rules as published in the *Texas Register* without changes. At its meeting on December 20, 2019, the Commission adopted the proposed rules without changes as recommended.

**SUBCHAPTER B. POWERS AND RESPONSIBILITIES**

**16 TAC §60.23**

**STATUTORY AUTHORITY**

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department’s governing body, to adopt rules as necessary to implement this chapter 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, 202, 401, 402, 1302, and 1305. 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.

Filed with the Office of the Secretary of State on January 10, 2020.

TRD-202000101
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: February 1, 2020
Proposal publication date: October 25, 2019
For further information, please call: (512) 463-8179

SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

16 TAC §60.36, §60.40
The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department’s governing body, to adopt rules as necessary to implement this chapter 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, 202, 401, 402, 1302, and 1305. 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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

SUBCHAPTER I. CONTESTED CASES

16 TAC §60.302
The adopted repeal is adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department’s governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51, 202, 401, 402, 1302, and 1305. No other statutes, articles, or codes are affected by the adopted repeal.

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

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Brad Bowman
General Counsel
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For further information, please call: (512) 463-8179

CHAPTER 65. BOILERS
SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION--REQUIREMENTS

16 TAC §65.12
The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter C, §65.12, regarding the Boilers Program, without changes to the proposed text as published in the September 13, 2019, issue of the Texas Register (44 TexReg 4925). The adopted changes are referred to herein as "adopted rules." The adopted rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

ADOPTED RULES January 24, 2020 45 TexReg 535
The rules under 16 TAC Chapter 65 implement Texas Health and Safety Code, Chapter 755, Boilers.

The adopted amendment implements §6.002 of House Bill (HB) 2847, Article 6, 86th Legislature, Regular Session (2019), which amends Health and Safety Code §755.029(c), removing the requirement to post boiler certificates of operation under glass. The adopted rules are necessary to implement the statutory change.

Amendments to §65.2 and §65.64, relating to extensions of the interval between internal inspections of boilers, were also proposed in this rulemaking. Similar amendments to §65.2 and §65.64 were first proposed and published in the Texas Register for public comment on October 5, 2018. Following the comment period and the receipt of written and oral comments, the Board of Boiler Rules (Board), at its December 5, 2018, meeting deliberated and recommended that the amendments related to extensions be returned to the Board's task group.

After reconsideration and modification, amendments to §65.2 and §65.64, and the amendment to §65.12, were presented to the Board at its August 19, 2019, meeting. The Board voted to propose the rules without changes, as they were published in the Texas Register on September 13, 2019. Subsequent to the public comment period and the receipt of written and oral comments, at its November 7, 2019, meeting the Board discussed the rules and voted to adopt only the legislative implementation change to §65.12, and to again return the amendments to §65.2 and §65.64, related to extensions, to the task group for further review.

The Commission considered the proposed rules at its December 20, 2019, meeting and agreed that the amendment to §65.12 should be adopted but that the amendments to §65.2 and §65.64 should not be adopted. Therefore, the proposed amendments to §65.2 and §65.64, relating to extensions of the interval between internal inspections of boilers, are not adopted in this rulemaking and will be withdrawn.

SECTION-BY-SECTION SUMMARY

The adopted amendment to §65.12 removes the obligation to post a boiler's certificate of operation under glass, to implement the HB 2847 statutory change.

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 13, 2019, issue of the Texas Register (44 TexReg 4925). The deadline for public comments was October 14, 2019. The Department received comments from three interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: Xcel Energy commented that the new definitions for "standby," "operation," and "out of service" are adequate and accurate but proposes that the requirement in §65.64 to report outages greater than 10 days be rejected by the board. The commenter states that the requirement will be burdensome and will bring no value to the owner, AIA's, and TDLR. Praxair Inc. commented that the notification to the state and to the authorized inspection agency when a boiler is shut down for a period exceeding 10 days is too restrictive for plants that have regular shutdowns for general process maintenance not associated with the boiler. The commenter requests that the notification to the Department be required only after 30 days of shutdown.

Department Response: In response to this and other comments and the decision of the Board and the Commission, the Department is withdrawing the proposed amendments to §65.2 and §65.64 from this rulemaking. Amendments to these sections may be the subject of future rulemaking proceedings in which the Department will respond to all comments received in relation to these sections.

Comment: The Texas Chemical Council and the Texas Oil and Gas Association, commenting jointly, commented in support of clarifying the eligibility for an extended interval between internal inspections but requested changes to the proposed text in consideration of the impact to refining and petrochemical industry operations:

--Remove the italicized text from the definition of "out of service": "A boiler is out of service when it is not in operation and it is not designated as in standby." Also modify the definition of "standby" to allow the boiler to be out of service when there is an unplanned shutdown and no repairs are being performed, to read "A boiler is in standby when the owner or operator has designated it as in standby and it is in operation at low fire or it is designated as in standby and out of service with no repairs."

--Increase the amount of time from a maximum of 10 consecutive days to a maximum of 30 consecutive days that a boiler can be out of service before notification is required to maintain eligibility for an extension, including times when one or more opportunistic repairs are being made. Amend the rule to not require continuous water treatment when a boiler is designated as in standby and out of service with no repairs. Clarify at what point the time period for notification begins if a boiler is in standby before an opportunistic repair begins. Clarify which types of repairs may be made for which eligibility for an extension will be preserved if the time out of service will exceed 10 days.

Department Response: In response to this and other comments and the decision of the Board and the Commission, the Department is withdrawing the proposed amendments to §65.2 and §65.64 from this rulemaking. Amendments to these sections may be the subject of future rulemaking proceedings in which the Department will respond to all comments received in relation to these sections.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Board of Boiler Rules met on November 7, 2019, to discuss the proposed rules and the public comments received. The Board recommended adopting the proposed rules with the exception of the amendments to Subchapter A, §65.2 and Subchapter I, §65.64. The Commission considered the proposed rules at its December 20, 2019, meeting and agreed that, as recommended by the Board, the amendment to §65.12 should be adopted but that the amendments to §65.2 and §65.64 should not be adopted.

STATUTORY AUTHORITY

The rule is adopted under Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.
CHAPTER 73. ELECTRICIANS

16 TAC §73.71

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.71, regarding the Electricians program, without changes to the proposed text as published in the November 8, 2019, issue of the Texas Register (44 TexReg 6651). The adopted changes are referred to as the "adopted rule." The adopted rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 73, implement Texas Occupations Code, Chapter 1305, Electricians.

The adopted rule is necessary to implement House Bill (HB) 1342, 86th Legislature, Regular Session (2019). Section 2 of HB 1342 authorizes the Texas Commission of Licensing and Regulation ("Commission") and the Department's Executive Director to issue a restricted license to a person as an alternative to denying, revoking, suspending, or refusing to issue a license. Section 2 also authorizes the Department to impose reasonable conditions on a holder of a restricted license. Notably, a restricted license may only be issued to applicants within the Department's Air Conditioning and Refrigeration (Texas Occupations Code, Chapter 1302) and Electricians (Texas Occupations Code, Chapter 1305) programs.

The adopted rule requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. Additionally, the adopted rule requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. Lastly, the adopted rule requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work.

SECTION-BY-SECTION SUMMARY

The adopted rule contains three subsections. Adopted rule §73.71(a) requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. A holder of a restricted license who does not comply with the terms of a restricted license may be subject to an administrative penalty or other sanction as allowed by Texas Occupations Code, Chapter 51.

Adopted rule §73.71(b) requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. This subsection simply restates Texas Occupations Code §51.357(d) as enacted by HB 1342.

Adopted rule §73.71(c) requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work under that license. Potential conditions that could be imposed by the Commission or Executive Director pursuant to Texas Occupations Code §51.357(b) are that the license holder be subject to close supervision, or be allowed to work in only nonresidential settings. Because HB 1342 and adopted rule §73.71(b) require supervisors to use care to ensure that persons under their supervision with restricted licenses comply with the terms of licensure, it is reasonable that licensees be required to inform their employers of those conditions.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the November 8, 2019, issue of the Texas Register (44 TexReg 6651). The deadline for public comments was December 9, 2019. The Department received comments from 15 interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated opposition to the proposed rule, stating, "If a person is competent at his craft he would not need a restricted license. It is not fair to the journeymen and apprentices that have completed the training to become competent craftsmen and would be a liability to the TDLR I think in the long run."

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rule's intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not possess the requisite skill, experience, and competence to hold an electrical license. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, claiming that the provisions regarding restricted licenses will add liability exposure for small businesses. The commenter did not elaborate further.

Department Response: The Department appreciates the comment. The proposed rule simply implements the restricted license provisions of HB 1342 and does not reflect a policy decision by the Commission or Department. It is not possible for the Department to determine whether or in what form the implementation of HB 1342 would result in increased liability for any business. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, claiming that "Up to this point most people think that a person with a license has been vetted by the state and may allow them to do work thinking they are trustworthy and free of criminal convictions."

Department Response: The Department appreciates the comment. However, persons with some degree of criminal history are eligible for licensure if the criminal offense is unrelated to the particular profession, or if the Department finds that the person has been rehabilitated. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked whether a person with no education or training in the field would be eligible for a restricted license.
**Department Response:** No. A person who has not met all of the conditions for licensure will not be eligible for a restricted license. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated approval of the proposed rule. The commenter stated that he or she was from outside of Texas and was not eligible for a license via reciprocity. The commenter said that the restricted license would help him or her work on electrical projects in Texas when needed.

**Department Response:** The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rule’s intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not meet the requirements for licensure in Texas. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed approval of the proposed rule and thanked the Department for the opportunity to share his opinion.

**Department Response:** The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: Two commenters asked the Department to state the purpose of a restricted license, to provide examples of persons who would need a restricted license, and to give examples of potential restrictions.

**Department Response:** The Department responded to the commenter directly. The Department pointed the commenter to the provisions of HB 1342, which provide the information sought by the commenter. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, stating that the rule is an “accommodation to the underachievers.”

**Department Response:** The Department appreciates the comment. The proposed rule simply provides an implementation of HB 1342 and is not intended to accommodate persons who do not possess the qualifications for licensure. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked for information on how to become a testing center.

**Department Response:** The Department responded to the commenter directly. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked whether a restricted license would be available for electrical contractors, and how monitoring of contractors would work in practice.

**Department Response:** HB 1342 authorizes the issuance of a restricted license to any licensee within the Electricians program; therefore, an electrical contractor could potentially be issued a restricted license. If a contractor were to be issued a restricted license, the Commission or Executive Director would have to be certain that the contractor could be adequately monitored. In theory, the Commission or Executive Director could require a restricted electrical contractor to report regularly about the company’s operations, and/or to restrict the company’s electrical work to industrial or commercial settings. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, stating that "It is becoming to (sic) hard for contractors to police the rules that the state mandates to contractors."

**Department Response:** The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed support for the proposed rule, stating that it "would allow an increase of licensees to become legal and therefore the safety of our industry and community would benefit from this proposed rule."

**Department Response:** The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed opposition to the inclusion of proposed subsection (b). The commenter characterized the subsection's "reasonable care" standard as "vague, arbitrary, and capricious." The commenter further equated subsection (b) with a tax on air conditioning and refrigeration contractors.

**Department Response:** Proposed rule 73.71(b) simply implements Texas Occupations Code §51.357(d), which was added by Section 2 of HB 1342. Section 51.357(d) states, 'A license holder who supervises the holder of a restricted license shall use reasonable care to ensure that the license holder complies with any condition imposed under this section.' We disagree with the commenter's characterization of the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated disagreement with the proposed rule. Regarding proposed 73.71(a), the commenter asked how the Department would be able to monitor a licensee’s compliance with the conditions placed on a restricted license. Regarding proposed 73.71(b), the commenter stated that the proposed rule would place an undue burden on electrical contractors. Regarding proposed 73.71(c), the commenter expressed belief that restricted licensees would not be forthcoming in informing employers of the restrictions on their license.

**Department Response:** The Department appreciates the comment. Regarding the Department's monitoring of compliance with the conditions of a restricted license, we do not anticipate that the Department's electrical inspectors will be charged with monitoring all restricted licensees. Rather, we expect that reporting requirements will be imposed on restricted licensees. Regarding the commenter's concern about proposed 73.71(b), we reiterate that the subsection simply implements Texas Occupations Code §51.357(d), which was added by Section 2 of HB 1342. Section 51.357(d) states, 'A license holder who supervises the holder of a restricted license shall use reasonable care to ensure that the license holder complies with any condition imposed under this section.' Regarding the commenter's concern about proposed 73.71(c), the purpose of the proposed subsection is to provide a disincentive for restricted licensees to be less than forthcoming about the conditions attached to their license. The Department did not make any changes to the proposed rule in response to this comment.

**COMMISSION ACTION**

At its meeting on December 20, 2019, the Commission adopted the proposed rule without changes.
STATUTORY AUTHORITY
The new rule is adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. Texas Occupations Code §51.357, as enacted by HB 1342, also provides a basis for the adopted rule.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adopted rule.

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

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Brad Bowman
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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.75
The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.75, regarding the Air Conditioning and Refrigeration program, without changes to the proposed text as published in the November 8, 2019, issue of the Texas Register (44 TexReg 6653). The adopted change is referred to as the "adopted rule." The adopted rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE
The rules under 16 TAC Chapter 75 implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

The adopted rule is necessary to implement House Bill (HB) 1342, 86th Legislature, Regular Session (2019). Section 2 of HB 1342 authorizes the Texas Commission of Licensing and Regulation ("Commission") and the Department's Executive Director to issue a restricted license to a person as an alternative to denying, revoking, suspending, or refusing to issue a license. Section 2 also authorizes the Department to impose reasonable conditions on a holder of a restricted license. Notably, a restricted license may only be issued to applicants within the Department's Air Conditioning and Refrigeration (Texas Occupations Code, Chapter 1302) and Electricians (Texas Occupations Code, Chapter 1305) programs.

The adopted rule requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. Additionally, the adopted rule requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license.

Lastly, the adopted rule requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work.

SECTION-BY-SECTION SUMMARY
The adopted rule contains three subsections. Adopted rule §75.75(a) requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. A holder of a restricted license who does not comply with the terms of a restricted license may be subject to an administrative penalty or other sanction as allowed by Texas Occupations Code, Chapter 51.

Adopted rule §75.75(b) requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. This subsection simply restates Texas Occupations Code §51.357(d) as enacted by HB 1342.

Adopted rule §75.75(c) requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work under that license. Potential conditions that could be imposed by the Commission or Executive Director pursuant to Texas Occupations Code §51.357(b) are that the license holder be subject to close supervision, or be allowed to work in only nonresidential settings. Because HB 1342 and adopted rule §75.75(b) require supervisors to use care to ensure that persons under their supervision with restricted licenses comply with the terms of licensure, it is reasonable that licensees be required to inform their employers of those conditions.

PUBLIC COMMENTS
The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the November 8, 2019, issue of the Texas Register (44 TexReg 6653). The deadline for public comments was December 9, 2019. The Department received comments from 13 interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated opposition to the proposed rule, stating, "If a person is competent at his craft he would not need a restricted license. It is not fair to the journeymen and apprentices that have completed the training to become competent craftsmen and would be a liability to the TDLR I think in the long run."

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rule's intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not possess the requisite skill, experience, and competence to hold an electrical or air conditioning and refrigeration license. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, claiming that the provisions regarding restricted licenses will add liability exposure for small businesses. The commenter did not elaborate further.

Department Response: The Department appreciates the comment. The proposed rule simply implements the restricted license provisions of HB 1342 and does not reflect a policy decision by the Commission or Department. It is not possible for the Department to determine whether or in what form the imple-
mentation of HB 1342 would result in increased liability for any business. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, claiming that "Up to this point most people think that a person with a license has been vetted by the state and may allow them to do work thinking they are trustworthy and free of criminal convictions."

Department Response: The Department appreciates the comment. However, the Department commonly issues licenses to persons with some degree of criminal history if the criminal offense is unrelated to the particular profession, or if the Department finds that the person has been rehabilitated. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked whether a person with no education or training in the field would be eligible for a restricted license.

Department Response: No. A person who has not met all of the conditions for licensure will not be eligible for a restricted license. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated approval of the proposed rule. The commenter stated that he or she was from outside of Texas and was not eligible for a license via reciprocity. The commenter said that the restricted license would help him or her work on electrical projects in Texas when needed.

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rule's intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not meet the requirements for licensure in Texas. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed approval of the proposed rule and thanked the Department for the opportunity to share his opinion.

Department Response: The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked the Department to state the purpose of a restricted license, to provide examples of persons who would need a restricted license, and to give examples of potential restrictions.

Department Response: The Department responded to the commenter directly. The Department pointed the commenter to the provisions of HB 1342, which provide the information sought by the commenter. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, stating that it is an "accommodation to the underachievers."

Department Response: The Department appreciates the comment. The proposed rule simply provides an implementation of HB 1342 is are not intended to accommodate persons who do not possess the qualifications for licensure. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked for information on how to become a testing center.

Department Response: The Department responded to the commenter directly. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked whether the proposed rule would be applicable to registered air conditioning and refrigeration technicians.

Department Response: Yes. The proposed rule would allow the Commission or Executive Director to issue a restricted license to a registered air conditioning and refrigeration technician. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed opposition to the inclusion of proposed subsection (b). The commenter characterized the subsection's "reasonable care" standard as "vague, arbitrary, and capricious." The commenter further equated subsection (b) with a tax on air conditioning and refrigeration contractors.

Department Response: Rule 75.75(b) implements Texas Occupations Code §51.357(d), which was added by Section 2 of HB 1342. Section 51.357(d) states, "A license holder who supervises the holder of a restricted license shall use reasonable care to ensure that the license holder complies with any condition imposed under this section." We disagree with the commenter's characterization of the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter inquired about the application requirements for a restricted license, and asked what scope of work a restricted license would cover.

Department Response: There are no application requirements for a restricted license. A person seeking a particular license, or renewal thereof, would apply in the regular fashion. In the event that the Commission or Executive Director saw fit to issue the person a restricted license instead of denying the application, the Commission or Executive Director would place reasonable restrictions on the license. The restrictions could, in theory, limit the scope or location of the license holder's practice. See Texas Occupations Code §51.357. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed confusion about the proposed rule and asked the Department for further information on the background of the proposed rule.

Department Response: The Department sent the commenter a link to HB 1342 and the House Research Organization analysis of the bill. The Department did not make any changes to the proposed rule in response to this comment.

COMMISSION ACTION

At its meeting on December 20, 2019, the Commission adopted the proposed new rule without changes.

STATUTORY AUTHORITY

The new rule is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. Texas Occupations Code §51.357, as enacted by HB 1342, also provides a basis for the adopted rule.
The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adopted rule.

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

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Brad Bowman
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CHAPTER 87. USED AUTOMOTIVE PARTS RECYCLERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 87, §§87.15, 87.44, 87.45, and 87.85; and adopts the repeal of existing §§87.24 - 87.26, and 87.46, regarding the Used Automotive Parts Recyclers program without changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5691). The adopted changes are referred to as "adopted rules." The adopted rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 87 implement Texas Occupations Code, Chapter 2309, relating to Used Automotive Parts Recyclers (UAPR).

The adopted rules are necessary to implement House Bill (H.B.) 2847, Article 15, 86th Legislature, Regular Session (2019), which amended Chapter 2309, Occupations Code, by: (1) repealing the licensing requirement and fees for employees working at UAPR facilities; (2) repealing the provisions requiring risk-based inspections and fees for repeat violators of Chapter 2309, Occupations Code; and (3) increasing the periodic inspection time period to every four years.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §87.15 by removing reference to the UAPR employee license type.

The adopted rules repeal §87.24, which required a UAPR employee license for a person employed on a UAPR facility.

The adopted rules repeal §87.25, which established the licensing requirements for the issuance of a UAPR employee license.

The adopted rules repeal §87.26, which established the licensing renewal requirements for the issuance of a UAPR employee license.

The adopted rules amend §87.44 by removing reference to risk-based inspections.

The adopted rules amend §87.45 to increase the amount of time for periodic inspections by the Department to once every four years. The adopted rules also remove the risk-based inspection requirement for repeat violations discovered during periodic inspections.

The adopted rules repeal §87.46, which required risk-based inspections for repeat violators of periodic inspections.

The adopted rules amend §87.85 to remove licensing fees associated with the UAPR employee license and the fee for a risk-based inspection.

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 October 4, 2019, issue of the Texas Register (44 TexReg 5691). The deadline for public comments was November 4, 2019. 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 Used Automotive Parts Recycling Advisory Board met on November 13, 2019, to discuss the proposed rules and the public comments received. The Board recommended that the Commission adopt the proposed rules as published in the Texas Register without changes. At its meeting on December 20, 2019, the Commission adopted the proposed rules without changes as recommended by the Board.

16 TAC §§87.15, 87.44, 87.45, 87.85

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2309, 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 2309. 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.

Filed with the Office of the Secretary of State on January 10, 2020.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

16 TAC §§87.24 - 87.26, 87.46

The repeals are adopted under Texas Occupations Code, Chapters 51 and 2309, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.
The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2309.

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

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CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §§114.10, 114.20, 114.21, 114.23, 114.28, 114.50, 114.80, 114.90

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 114, §§114.10, 114.20, 114.21, 114.23, 114.50, 114.80, and 114.90, and the rule chapter heading, regarding the Orthotists and Prosthetists program, without changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5694). These rules will not be republished.

The amendments to §114.28 regarding the Orthotists and Prosthetists program are adopted with changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5694). This rule will be republished.

The adopted changes are referred to as "adopted rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 114 implement Texas Occupations Code, Chapter 605, Orthotists and Prosthetists.

The adopted rules implement House Bill (HB) 2847, Article 11, 86th Legislature, Regular Session (2019), which repeals §605.002(19), (20), (21), Definitions, and §605.259, technician registration, from the Occupations Code, eliminating the technician registration from the Orthotists and Prosthetists program. The registration of technicians was voluntary, and there was little demand for the credential, so eliminating it was supported by the Department and the professionals in this field. The adopted rules are necessary to remove all requirements in Chapter 114 that are related to the technician registration. Other amendments to the rule chapter title and citations to the orthotists and prosthetists statute are made for consistency with the statute, to remove unnecessary text, and a change in §114.50 improves a wording choice.

SECTION-BY-SECTION SUMMARY

The adopted amendment to the chapter title renames the chapter to be consistent with Occupations Code, Chapter 605, Orthotists and Prosthetists.

The adopted amendments to §114.10 remove unnecessary text, make a citation consistent with the statute, and remove the definitions of "registered orthotic technician," "registered prosthetic technician," and "registered prosthetic/orthotic technician" because these credentials will no longer exist. A definition for "technician" is added because technicians will continue to work for licensees in the Orthotists and Prosthetists program. The definitions within the section are renumbered accordingly.

The adopted amendments to §114.20 remove provisions related to disapproval of a technician registration application.

The adopted amendments to §114.21 remove the technician registration renewal period.

The adopted amendments to §114.23 remove unnecessary text.

The adopted amendments to §114.28 remove technician registration requirements and specify the scope of work technicians may perform under the direction of licensees in the Orthotists and Prosthetists program.

The adopted amendments to §114.50 remove the technician continuing education requirements and improve a wording choice.

The adopted amendments to §114.80 remove fees for technician registrations and renewals, and renumber the section accordingly.

The adopted amendments to §114.90 correct a citation to the statute.

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 October 4, 2019, issue of the Texas Register (44 TexReg 5694). The deadline for public comments was November 4, 2019. 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 Orthotists and Prosthetists Advisory Board recommended the publication of the proposed rules at their September 12, 2019, meeting. At its meeting on December 20, 2019, the Commission adopted the proposed rules with the editorial change to §114.28(c) by adding the word "a" to correct a drafting error.

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 605, 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 605. No other statutes, articles, or codes are affected by the adopted rules.

§114.28. Technician.

(a) A technician must be supervised by a licensed prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant.

(b) A licensed prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant
shall direct the activities of a technician and is responsible for the acts of the technician.

(c) A technician may fabricate, assemble, or service orthoses or prostheses only under the direction of a person licensed under this chapter and is not authorized to provide patient care to orthotic or prosthetic patients, including ancillary or assistant patient care services.

(d) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman
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CHAPTER 117. MASSAGE THERAPY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 117, Subchapter A, §117.2; Subchapter C, §§117.20, 117.21, and 117.23; Subchapter D, §117.31; Subchapter E, §117.40; Subchapter F, §§117.50 - 117.55, 117.57 - 117.59, 117.61, 117.62, and 117.65 - 117.68; Subchapter G, §§117.80, 117.82, and 117.83; Subchapter H, §§117.90, 117.91, and 117.93; Subchapter I, §117.100; new rule Subchapter C, §117.25; and the repeal of Subchapter F, §117.56 and §117.60, regarding the Massage Therapy Program, without changes to the proposed text as published in the October 11, 2019, issue of the Texas Register (44 Tex Reg 5841). These rules and repeals are not being republished.

The amendments to Subchapter F §117.64, regarding the Massage Therapy Program, are adopted with changes to the proposed text as published in the October 11, 2019, issue of the Texas Register (44 Tex Reg 5841) and are republished. The adopted changes are referred to herein as "adopted rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 117 implement Texas Occupations Code, Chapter 455, Massage Therapy.

The adopted rules implement necessary changes required by House Bill (HB) 1865 and HB 2747, 86th Legislature, Regular Session (2019).

As required by HB 1865, the adopted rules remove the five-year ban to obtain a license for violations of Chapter 455, Texas Occupations Code; require fingerprint criminal history checks; create a student permit and provides for a fee; and require massage schools report to the Department monthly student progress reports.

As required by HB 2747, the adopted rules prohibit residing on the premises of a licensed massage establishment; require a photograph on the licenses of massage therapists; and require the posting of human trafficking information in massage schools and establishments.

The adopted rules include recommendations from the Massage Therapy Advisory Board (Advisory Board) Standard of Care workgroup to address draping standards and remove the prohibition on using testimonials in advertisements as addressed in two opinions issued by the Office of the Attorney General (JC-0342 and JC-0458).

The adopted rules also include recommendations from the Advisory Board's Education and Examination workgroup to reduce regulatory burdens and streamline processes and procedures for massage schools to provide more efficiencies and clarity to the industry.

The adopted rules were presented to and discussed by the Advisory Board at its meeting on August 29, 2019. The Advisory Board voted and recommended that the proposed rules be published in the Texas Register for public comment.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §117.2, adding a definition for "linens" to provide clarity for health, safety, and sanitation standards for massage schools and establishments and add a definition for "student permit" as created by HB 1865.

The adopted rules amend the title of Subchapter C, adding student permit, as created by HB 1865.

The adopted rules amend §117.20, adding that criminal history background checks must be done in accordance with the Department's criminal conviction guidelines and Chapter 455, Chapter 51, and Chapter 53 of the Texas Occupations Code. The adopted rules establish the fingerprint requirements for criminal history background checks as required by HB 1865 by adding statutory language to the rule.

The adopted rules amend the title of §117.21, replacing the term "reciprocity" with the term "substantial equivalence," which more accurately reflects the process by which the Department evaluates applicants from another state.

The adopted rules amend §117.23, adding the requirement to attach a current photo to an individual massage therapist license as required by HB 2747.

The adopted rules add a new §117.25, outlining the general requirements, application process, and license term for student permits as created by HB 1865.

The adopted rules amend §117.31, updating the list of acceptable entities that provide continuing education courses to include those offered by associations and by approved massage therapy schools, instead of having a separate process for approval of individual advanced course work. This will provide clarity for licensees as to what is acceptable continuing education when taken through an acceptable entity, instead of on a course by course basis.

The adopted rules amend §117.40, making a clerical change by fixing a typo.

The adopted rules amend §117.50, removing regulatory burdens for massage school by streamlining the requirements and application process to require only necessary documentation for proof of ownership or lease agreements and financial stability. The adopted rules add that adequate space and equipment must be provided to students, that schools must comply with health and

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safety standards, and submit information on the school's designated contact person, if applicable, to the general requirements for an applicant. The adopted rules add requirements for schools when accounting for student hours and the requirement to report on student progress to the Department in accordance with HB 1865. The adopted rules also add that criminal history background checks must be done in accordance with the Department's criminal conviction guidelines and Chapter 455, Chapter 51, and Chapter 53 of the Texas Occupations Code. The adopted rules establish the fingerprint requirements for criminal history background checks as required by HB 1865 by adding statutory language to rule.

The adopted rules amend §117.51, streamlining the application process for additional massage school locations to match the application process for opening a massage school, clarifying outdated language by properly referencing a massage school and not a massage therapy education program, and adding the current process to change the location of an established massage school to rule.

The adopted rules amend §117.52, clarifying that a massage school must apply for a new massage school license thirty (30) days prior to changing ownership and outlining more clearly what actions may constitute a change of ownership.

The adopted rules amend §117.53, updating outdated language, outlining the process for massage schools using a time clock for tracking student progress and reporting as required by HB 1865, and adding the requirement that a massage school must display a human trafficking sign, as required by statute, that is acceptable to the Department.

The adopted rules amend §117.54, updating the title and including recommendations from the Massage Therapy Advisory Board Education and Examination workgroup to streamline the health and safety requirements for massage schools and provide licensees with more clarity. These changes include removing outdated requirements, using more appropriate terminology, and combining redundant provisions.

The adopted rules amend §117.55, updating inspection requirements to ensure student records are properly maintained because of the creation of a student permit in HB 1865 and providing more details on the process for corrective modifications after school inspections for clarity.

The adopted rules repeal §117.56, removing an overly burdensome process from rule and the requirement for financial stability has been simplified and moved to the general requirements for applicants for massage schools.

The adopted rules amend §117.57, adding that criminal history background checks must be done in accordance with the Department's criminal conviction guidelines and Chapter 455, Chapter 51, and Chapter 53 of the Texas Occupations Code. The adopted rules also update outdated language for clarity and add that notices may be emailed.

The adopted rules amend §117.58, streamlining the rules to use one term for the massage schools contact person.

The adopted rules amend §117.59, updating outdated language, making clerical changes, and removing the hours cap and approval process for courses and internships. Chapter 455, Texas Occupations Code, provides that the Department shall issue a license to an applicant that presents evidence satisfactory to the Department that they have completed massage therapy studies in a 500-hour minimum course. There is no statutory require-

ment that the course or internship be capped or separately approved.

The adopted rules repeal §117.60, removing a regulatory burden for schools approved to be course providers and will no longer require additional approval of specific courses.

The adopted rules amend §117.61, removing the burden of submitting copies of admission requirements to the Department and clarifying the process for transcript review.

The adopted rules amend §117.62, removing the requirement that enrollment information include information about being ineligible for a license until the fifth anniversary of the date of conviction for a violation of the Act as removed by HB 1865 updating out of date terminology, and adding requirements for student permits created by HB 1865.

The adopted rules amend §117.64, updating out of date language, adding procedures for schools to report progress to the Department that use time clocks, and removing redundant student registry requirements due to the creation of student permits and reporting requirements as required by HB 1865.

The adopted rules amend §117.65, rewording the section for clarity.

The adopted rules amend §117.66, updating the massage school refund language to reflect current language and process used to determine and calculate refunds.

The adopted rules amend §117.67, outlining the process for reporting of student progress to the Department as required by HB 1865.

The adopted rules amend §117.68, removing a requirement for termination of students based on absences that is outdated and confusing and updating the language of the rule.

The adopted rules amend §117.80, adding that criminal history background checks must be done in accordance with the Department's criminal conviction guidelines and Chapter 455, Chapter 51, and Chapter 53 of the Texas Occupations Code. The adopted rule amendment establishes the fingerprint requirements for criminal history background checks, as required by HB 1865, by adding statutory language to rule.

The adopted rules amend §117.82, adding the requirement for massage establishments to post a sign with human trafficking information and prohibiting residing on the premises of massage establishments as required by HB 2747.

The adopted rules amend §117.83, streamlining sanitation requirements for massage establishments by removing outdated requirements, using more appropriate terminology, and combining redundant provisions.

The adopted rules amend §117.90, adding required draping standards.

The adopted rules amend §117.91, adding information on draping standards to the requirements for the consultation document.

The adopted rules amend §117.93, removing the prohibition on testimonials being used in advertisements in response to two Office of the Attorney General opinions.

The adopted rules amend §117.100, adding the fee for student permits, as created by HB 1865, and updating language for clarity.

PUBLIC COMMENTS
The Department drafted and distributed the rules to persons internal and external to the agency. The proposed rules were published in the October 11, 2019, issue of the Texas Register (44 TexReg 5841). The deadline for public comments was November 11, 2019. The Department received comments from 17 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter agrees with the cap on hours being removed for internships and would like to have a state exam.

**Department Response:** The proposed rules remove the cap on the number of internship hours a student can obtain to align requirements with statute. Texas Occupations Code Chapter 455, §455.053 and §455.055, states that the Department must set the maximum number of hours a student may accumulate before the student is required to be licensed. The maximum number of hours a student may accumulate in an internship before they may obtain a license is 50 hours, as prescribed in Texas Occupations Code Chapter 455, §455.156. The comment on a state exam does not address any of the current proposed rules. It has been referred to the appropriate division for review. No change has been made to the proposed rules in response to this comment.

Comment: One commenter disagrees with the removal of the requirement that justifications be submitted to the Department on admission requirements.

**Department Response:** The proposed rules require that a school develop and maintain admission requirements without the added burden of justifying those business decisions to the Department. No change has been made to the proposed rules in response to this comment.

Comment: One commenter is concerned with the current rules regarding massage school license renewals at §117.57(e) and the impact on students and student permits.

**Department Response:** The proposed rules make a clarifying change to the term massage school by removing the phrase "a massage therapy education program." The proposed rules do not change the purpose or impact of current rules at §117.57(e), beyond removing the extra language. The commenter is concerned with the impact of current rules on students and the student permit process. These are procedural and administrative concerns and beyond the scope of the proposed rules. No change has been made to the proposed rules in response to this comment.

Comment: One commenter would like to see the student permit expire upon successful completion of the number of internship hours.

**Department Response:** The proposed rules for new student permits provide for Department procedural and administrative implementation of the new permit. This requirement allows the Department to properly track the student throughout the course of their career, provides administrative safeguards, and does not require students to pay multiple fees or renewals. No change has been made to the proposed rules in response to this comment.

Comment: One commenter believes that the definition for "student permit" is unclear and seems to limit students to only 50 internship hours.

**Department Response:** The proposed rules for student permits and the definition of "student permit" does not limit the number of internship hours that a student can accumulate. The proposed rules address only the requirements the Department is required to track a student as they complete the minimum 500-hour education required by law. No change has been made to the proposed rules in response to this comment.

Comment: One commenter does not agree with removing §117.58(b) regarding designation of an individual by the director of a massage school when the director is unavailable or absent.

**Department Response:** The proposed rules add the requirement that a massage school shall notify the Department of the designated contact person to §117.58(a) where the current rule already outlines the responsibilities of the designated contact person. No change has been made to the proposed rules in response to this comment.

Comment: Two commenters are concerned with the removal of the "hour cap" or "maximum number of hours" a student may accumulate in a massage school internship and how this change aligns with statute.

**Department Response:** The proposed rules remove the cap on the number of internship hours a student can obtain to align requirements with statute. Texas Occupations Code Chapter 455, Sections 455.053 and 455.055 states that the Department must set the maximum number of hours a student may accumulate before the student is required to be licensed. The maximum number of hours a student may accumulate in an internship before they may obtain a license is 50 hours, as prescribed in Texas Occupations Code Chapter 455, §455.156. No change has been made to the proposed rules in response to these comments.

Comment: One commenter believes that §117.66(b)(6)(B)(ii) and (i) pertaining to massage school refund policies say opposite things and is concerned with how a student is protected in the event a massage school does not teach the total scheduled hours in any required program.

**Department Response:** The proposed rules do not make substantive changes to current rules at §117.66(b)(6)(B) pertaining to massage school refund requirements. The proposed rules update the terminology to "unused" instead of "unearned" tuition for clarity. Section 117.66(b)(6)(B)(i) speaks to "all" tuition while §117.66(b)(6)(B)(ii) speaks to only the "unused" portion of the tuition that can be refunded. The current rule is speaking to two different situations. The commenter raises an issue specific question about the application of the current rules, this comment has been referred to the appropriate division for review. No change has been made to the proposed rules in response to this comment.
Comment: One commenter would like to know the purpose of §117.64(e)(3) and feels like it is already covered in another section.

Department Response: The proposed rule does not make a substantive change to current rule. The proposed rules remove the redundant use of the phrase "therapy education program" and renumbers the section. The requirement of §117.64(e)(3) is current rule and outlines what records must be retained by the school for a period of three years. No change has been made to the proposed rules in response to this comment.

Comment: The Career Colleges and Schools of Texas commented that they are concerned that the proposed rules at §117.59 could be interpreted to prohibit programs that exceed 500 hours.

Department Response: The proposed rules remove the cap on the number of internship hours a student can obtain to align requirements with statute. Texas Occupations Code Chapter 455, §455.053 and §455.055, states that the Department must set the maximum number of hours a student may accumulate before the student is required to be licensed. The maximum number of hours a student may accumulate in an internship before they may obtain a license is 50 hours, as prescribed in Texas Occupations Code Chapter 455, §455.156. The rules, current and proposed, address the minimum 500-hour course of instruction within the jurisdiction of the department to regulate. The proposed rules do not prohibit programs that exceed 500 hours. No change has been made to the proposed rules in response to this comment.

Comment: One commenter disagrees with the new draping rules and believes it should be their right to choose whether or not to be draped or undraped. The commenter would like the Department to change the current refund policy rules and allow schools discretion of what the refund policy should look like.

Department Response: The proposed rules on draping were developed by the Massage Therapy Advisory Board Standard of Care workgroup. The requirement for draping of certain areas at all times is intended to protect not only the client but the therapist. The proposed rules provide updated terminology for school refunds to provide clarity. The comment does not address a current rule proposal because the proposed rules do not change the current refund process. The comment has been referred to the appropriate division for review.

Comment: One commenter states that the MBLEX is not a good test for Texas and would like to see it discontinued as soon as possible.

Department Response: The comment on the MBLEX does not address any of the current proposed rules. It has been referred to the appropriate division for review. No change has been made to the proposed rules in response to this comment.

Comment: One commenter submitted several concerns regarding the current and proposed rules specifically related to the following: use of the term "curriculum outline;" general requirements of an application of massage therapists; approved continuing education courses and providers; massage school curriculum outline and internship; massage school admission requirements; massage school transcripts and records; massage school cancellation, refund, and school closure policies; massage school student progress requirements; and massage school attendance policy.

Department Response: The commenter made several comments on rules that are not currently under review, have not been proposed for substantive change, or on issues that are beyond the scope of this rulemaking. Those portions of the comments have been referred to the appropriate division for further review.

The commenter is concerned with the removal of the cap on internship hours. The proposed rules remove the cap on the number of internship hours a student can obtain to align requirements with statute. Texas Occupations Code Chapter 455, §455.053 and §455.055, states that the Department must set the maximum number of hours a student may accumulate before the student is required to be licensed. The maximum number of hours a student may accumulate in an internship before they may obtain a license is 50 hours, as prescribed in Texas Occupations Code Chapter 455, §455.156. The Department does not have authority to approve more than the maximum number of hours a student may accumulate beyond what is required to obtain a license. The rules, current and proposed, address the minimum 500-hour course of instruction within the jurisdiction of the department to regulate. The proposed rules do not prohibit programs that exceed 500 hours. No change has been made to the proposed rules in response to this comment.

The commenter is concerned with what records are required to be retained by a massage school. The proposed rules retain some of the current requirements for records retention to ensure that the most pertinent information of a student record is retained for a minimum of three years to comply with audit or inspection requirements and for verification of potential transfer students. No change has been made to the proposed rules in response to this comment.

The commenter does not believe that the Department has authority or control to "make a student eligible to take the appropriate examination." The law provides the Department with the authority to prepare, recognize, administer or arrange for the administration of an examination under Chapter 455. The proposed rules implement the student permit requirements as required by House Bill 1865, 86th Legislature, Regular Session (2019). House Bill 1865 applies to students whom are enrolled in a massage school on or after June 1, 2020. The law requires in §455.2035, Texas Occupations Code, "On a student's completion of a prescribed course of instruction, the school shall notify the Department that the student has completed the required number of hours and is eligible to take the appropriate examination." No change has been made to the proposed rules in response to this comment.

The commenter does not agree with the requirement that financial records must be retained as required by federal retention requirements, if applicable. The Department agrees that this requirement is not necessary, burdensome, and should be removed. The Department made changes to the proposed rule in response to this comment and amended §117.64 to remove this requirement.

Comment: One commenter states that the requirement that the school notify the department that a student is eligible to take an exam is something never required before and does not serve the student.

Department Response: The proposed rules implement the student permit requirements as required by House Bill 1865, 86th Legislature, Regular Session (2019). House Bill 1865 applies to students whom are enrolled in a massage school on or after
June 1, 2020. The law states, in §455.2035(b), Texas Occupations Code, "On a student's completion of a prescribed course of instruction, the school shall notify the department that the student has completed the required number of hours and is eligible to take the appropriate examination." No change has been made to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Massage Therapy Advisory Board (Advisory Board) met on November 19, 2019, to discuss the proposed rules and the comments received. The Advisory Board recommended adopting the proposed rules with one change to §117.64. At its meeting on December 20, 2019, the Commission adopted the proposed rules with changes as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §117.2

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapters 51 and 455, 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 rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. 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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Brad Bowman
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For further information, please call: (512) 463-8179

SUBCHAPTER C. LICENSED MASSAGE THERAPIST AND STUDENT PERMIT

16 TAC §§117.20, 117.21, 117.23, 117.25

The rules are adopted under Texas Occupations Code, Chapters 51 and 455, 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 rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. 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. LICENSED MASSAGE THERAPY INSTRUCTORS

16 TAC §117.40

The rules are adopted under Texas Occupations Code, Chapters 51 and 455, 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 rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. 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 F. LICENSED MASSAGE SCHOOLS

16 TAC §§117.50 - 117.55, 117.57 - 117.59, 117.61, 117.62, 117.64 - 117.68

The rules are adopted under Texas Occupations Code, Chapters 51 and 455, 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 rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted rules.

§117.64. Massage School Transcripts and Records.

(a) Massage schools shall make available for inspection by the department all records relating to the massage school and necessary data required for approval and to show compliance with the Act and this subchapter. A copy of the accreditation authorization and the letter of eligibility from the U.S. Department of Education shall be available for review, if applicable.

(b) A massage school may use a time clock to track student hours and maintain a daily record of attendance.

(c) A massage school using a time clock shall post a sign at the time clock that state the following department requirements:

(1) Each student must personally clock in or out on their own;

(2) No credit shall be given for any times written in, except in a documented case of time clock failure or any other situation which is documented by a licensed instructor;

(3) If a student is in or out of the massage school for lunch, the student must clock out;

(4) Students leaving the massage school for any reason, including smoking breaks, must clock out, except when an instructional area, on a campus, is located outside the main school building and students are under the supervision of a licensed instructor.

(d) Each massage school shall maintain student transcripts of academic records permanently. Original or certified copies of transcripts (official transcripts) shall be available to students and any person authorized by the student at a reasonable charge if the student has fulfilled the financial obligation to the school. Transcripts must be made available to students who have satisfied the terms of the enrollment agreement within ten (10) calendar days of the date the terms are satisfied. The transcript of a student shall include the following:

(1) name and license number of massage therapy educational program;

(2) the name of the student;

(3) student's social security number;

(4) student's date of birth;

(5) inclusive dates of attendance;

(6) list of subjects and number of course hours taken by the student at the massage school;

(7) dates of courses;

(8) address of student;

(9) signature of the school owner or designated contact person; and

(10) pass/fail score.

(e) Each massage school shall retain the following student records for at least three years:

(1) enrollment agreements and contracts;

(2) written record and evaluation of previous education and training on a form provided by the department; and

(3) official transcript(s) from all previous post-secondary schools attended by the student.

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

Filed with the Office of the Secretary of State on January 10, 2020.
For EffectiveBrad
ESTABLISHMENTS
16
SUBCHAPTER

The repeals are adopted under Texas Occupations Code, Chapters 51 and 455, 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 repeals are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 455. 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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16 TAC §§117.56, §117.60
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SUBCHAPTER H. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§117.90, 117.91, 117.93
The rules are adopted under Texas Occupations Code, Chapters 51 and 455, 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 rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. 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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16 TAC §§117.80, 117.82, 117.83
The rules are adopted under Texas Occupations Code, Chapters 51 and 455, 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 rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted rules.

16 TAC §117.100
The rules are adopted under Texas Occupations Code, Chapters 51 and 455, 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 rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. 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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TITLE 22. EXAMINING BOARDS
PART 11. TEXAS BOARD OF NURSING
CHAPTER 216. CONTINUING COMPETENCY

22 TAC §216.8
The Texas Board of Nursing (Board) adopts amendments to §216.8, concerning Relicensure Process. The amendments are adopted with a minor editorial change to subsection (e) to include the term "applicable" for consistency with the other amended subsections of the section. The remainder of the adopted text is unchanged from the proposed text as published in the November 29, 2019, issue of the Texas Register (44 TexReg 7293). This rule will be republished.

Reasoned Justification. The amendments make conforming changes to the section for consistency with 22 TAC §216.3, which was amended and adopted by the Board on November 19, 2019. The changes to §216.3 were adopted under the authority of the Texas Occupations Code §§301.151, 157.0513 and 301.308, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2494, 2059, 3285, and 2174, enacted by the 86th Texas Legislature. Those adopted amendments affected §216.3(c) and added new §216.3(i), making the current references in §216.8 inconsistent and outdated. The adopted changes to §216.8 align the section with the provisions of newly amended §216.3.

How the Section Will Function. Section 216.8(b) - (e) eliminates the references to §216.3(d) because targeted continuing competency requirements are contained in other subsections of §216.3 and may apply when a nurse seeks reinstatement pursuant to §216.8.

Summary of Comments. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.


(a) Renewal of license.

(1) Upon renewal of the license, the licensee shall sign a statement attesting that the CNE contact hours or approved national nursing certification requirement has been met.

(2) The contact hours must have been completed within the licensing period and by the time of application for license renewal. Contact hours from a previous licensing period will not be accepted. Additional contact hours earned may not be used for subsequent licensure renewals.

(b) Persons licensed by examination. A candidate licensed by examination shall be exempt from the CNE contact hours or approved national nursing certification requirement for issuance of the initial Texas license and for the immediate licensing period following initial Texas licensure with the exception of applicable targeted continuing competency requirements in §216.3 of this chapter (relating to Continuing Competency Requirements).

(c) Persons licensed by endorsement. An applicant licensed by endorsement shall be exempt from the CNE contact hours or approved national nursing certification requirement for issuance of the initial Texas license and for the immediate licensing period following initial Texas licensure with the exception of applicable targeted continuing competency requirements in §216.3 of this chapter (relating to Continuing Competency Requirements).

(d) Delinquent license.

(1) A license that has been delinquent for less than four years may be renewed by the licensee submitting proof of having completed 20 contact hours of acceptable CNE or a current approved national nursing certification in his or her prior area of practice within the two years immediately preceding application for relicensure and by meeting all other Board requirements. A licensee shall be exempt from the continuing competency requirements for the immediate licensing period following renewal of the delinquent license with the exception of applicable targeted continuing competency requirements in §216.3 of this chapter (relating to Continuing Competency Requirements).

(2) A license that has been delinquent for four or more years may be renewed upon completion of requirements listed in §217.6 of this title (relating to Failure to Renew License).

(e) Reactivation of a license.

(1) A license that has been inactive for less than four years may be reactivated by the licensee submitting proof of having completed 20 contact hours of acceptable CNE or a current approved national nursing certification in his or her prior area of practice within the two years immediately preceding application for reactivation and by meeting all other Board requirements. A licensee shall be exempt from the continuing competency requirements for the immediate licensing period following reactivation of the license with the exception of ap-
Applicable targeted continuing competency requirements in §216.3 of this chapter (relating to Continuing Competency Requirements).

2 A license that has been inactive for four or more years may be reactivated upon completion of requirements listed in §217.9 of this title (relating to Inactive and Retired Status).

(f) Reinstatement of a license. A licensee whose license has been revoked and subsequently applies for reinstatement must show evidence that the continuing competency requirements and other Board requirements have been met prior to reinstatement of the license by the Board.

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 January 7, 2020.
TRD-202000038
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: January 27, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 305-6822

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.3

The Texas Board of Nursing (Board) adopts an amendment to §217.3, concerning Temporary Authorization to Practice/Temporary Permit. The amendment is adopted without changes to the proposed text published in the November 29, 2019, issue of the Texas Register (44 TexReg 7294). The rules will not be republished.

Reasoned Justification. The amendment is necessary to allow temporary authorizations to practice/temporary permits to be re-issued if a nurse is unable to complete the required courses/orientation within a six-month period. Due to scheduling challenges and an individual's performance pace, it sometimes takes a nurse longer than six months to complete a refresher course, extensive orientation, or academic course. The intent of §217.3 is to provide a mechanism for nurses to demonstrate their competency to return to nursing practice. Since they cannot practice nursing while completing a refresher course, extensive orientation, or academic course, they pose no risk of harm to the public during this time. The amendment merely allows the nurse a sufficient amount of time to re-establish current licensure after demonstrating he/she is safe and competent to do so. There is no cost associated with the issuance of a temporary authorization to practice/temporary permit under this section.

How the Section Will Function. Section 217.3 removes the current limitation from the rule that a temporary authorization to practice/temporary permit is unable to be re-issued/renewed. Under the adoption, a temporary authorization to practice/temporary permit may be re-issued/renewed if the nurse is unable to complete a refresher course, extensive orientation, or academic course within a six-month time period in order to grant the nurse additional time to complete the course/orientation.

Summary of Comments. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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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Jena Abel
Deputy General Counsel
Texas Board of Nursing
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Proposal publication date: November 29, 2019
For further information, please call: (512) 305-6822

22 TAC §217.5

The Texas Board of Nursing (Board) adopts amendments to §217.5, concerning Temporary License and Endorsement. The amendments are adopted without changes to the proposed text as published in the November 29, 2019, issue of the Texas Register (44 TexReg 7295) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Texas Occupations Code §301.151 and §301.253 and implement the requirements of Senate Bill (SB) 1200, enacted by the 86th Texas Legislature, effective September 1, 2019.

SB 1200

SB 1200 requires agencies like the Board to establish a process to allow qualifying military spouses to practice nursing in Texas without obtaining a license. In order to qualify for this licensure exemption, the military spouse must be currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements in this state. Further, the military spouse must notify the agency of his/her intent to practice in this state; submit proof of the individual's residency in this state and a copy of the individual's military identification card; and receive confirmation from the agency that the agency has verified the individual's license in the other jurisdiction and that the individual is authorized to practice nursing in this state. The individual may not practice nursing in this state for a period to extend beyond three years from the date the agency approves the individual's practice. The bill also permits an agency to issue a license to a qualifying military spouse if the agency chooses to do so. However, the agency is prohibited from charging the military spouse a fee for the issuance of the license.

Because employers, consumers, and other members of the public routinely utilize the Board's on-line licensure verification system to determine the licensure status of nurses in Texas, the
Board has determined that issuing licenses to qualifying military spouses is most consistent with its current licensure and verification processes. These licenses will be limited to three-year terms and will be searchable through the Board's on-line verification system in the same manner as other license types. Further, individuals receiving a license under the rule will not be required to complete continuing education requirements for the duration of the license, which is limited to a three-year time period.

**Canadian NCLEX-RN**

The remainder of the adopted changes are necessary to allow the successful completion of the Canadian NCLEX-RN and licensure from a Canadian province by NCLEX-RN to satisfy a portion of the Board's endorsement requirements. On January 5, 2015, the NCLEX-RN replaced the CRNE as Canada's national examination for those applying to be a registered nurse. The Board currently requires the successful completion of the U.S. NCLEX-RN for licensure as a registered nurse in Texas if the applicant is applying by endorsement. The Board also currently requires licensure by another U.S. jurisdiction for licensure as a registered nurse in Texas if the applicant is applying by endorsement. The adopted amendments to §217.5(g)(2) allow the Board to offer an endorsement opportunity to applicants successfully passing the Canadian NCLEX-RN and holding licensure from a Canadian province by NCLEX-RN. This opportunity will only apply to applicants seeking registered nurse licensure because the Canadian NCLEX-PN has not been approved for use at this time.

How the Section Will Function. Adopted 217.5(a)(2) allows a nurse to qualify for licensure in Texas through endorsement if he/she has successfully completed the Canadian NCLEX-RN in January 2015 or after. Adopted §217.5(a)(3) allows a nurse to qualify for licensure in Texas through endorsement if the nurse is licensed by a Canadian province by NCLEX-RN. The adopted amendments to §217.5(b) make similar conforming changes to this section.

Adopted §217.5(g)(1) sets forth the criteria that a military spouse must meet in order to be eligible for licensure under SB 1200. First, a military spouse must hold an active, current license to practice nursing in another state or territory that has licensing requirements, including education requirements, that are determined by the Board to be substantially equivalent to the requirements for nursing licensure in Texas. Second, the military spouse's license may not be subject to any current restriction, eligibility order, disciplinary order, probation, suspension, or other encumbrance. Third, the military spouse must submit proof of the military spouse's residency in Texas and a copy of the spouse's military identification card. Fourth, the military spouse must notify the Board of the military spouse's intent to practice nursing in Texas on a form prescribed by the Board. Finally, the military spouse must meet the Board's fitness to practice and eligibility criteria set forth in §213.27 (relating to Good Professional Character), §213.28 (relating to Licensure of Individuals with Criminal History), and §213.29 (relating to Fitness to Practice). Adopted §217.5(g)(2) provides that, if the military spouse meets this specified criteria, the Board will issue a license to the military spouse to practice nursing in Texas. Further, the license will expire no later than the third anniversary of the date of the issuance of the license and may not be renewed. The military spouse will not be charged a fee for the issuance of the license. Adopted §217.5(g)(3) provides that a military spouse who is unable to meet the specified criteria in (g)(1) may still seek licensure in Texas, pursuant to the requirements in §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), §213.30 (relating to Declaratory Order of Eligibility for Licensure), §221.3 (relating to APRN Education Requirements for Licensure), §221.4 (relating to Licensure as an APRN), or the other remaining subsections of §217.5, as applicable. Finally, adopted §217.5(g)(4) requires a military spouse issued a license to practice nursing in Texas to comply with all laws and regulations applicable to the practice of nursing in Texas.

**Summary of Comments.** The Board did not receive any comments on the proposal.

**Statutory Authority.** The amendments are adopted under the Occupations Code §§301.151, 301.253, and 55.0041. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.253(a) states that, except as provided by §301.452, an applicant is entitled to take the examination prescribed by the Board if: (1) the Board determines that the applicant meets the qualifications required by §301.252; and (2) the applicant pays the fees required by the Board.

Section 301.253(b) states that each examination administered under Section 301.253 must be prepared by a national testing service or the Board. The Board shall ensure that the examination is administered in various cities throughout the state.

Section 301.253(c) provides that the examination shall be designed to determine the fitness of the applicant to practice professional nursing or vocational nursing.

Section 301.253(c-1) states that the Board shall: (1) adopt policies and guidelines detailing the procedures for the testing process, including test admission, test administration, and national examination requirements; and (2) post on the Board's Internet website the policies that reference the testing procedures by the national organization selected by the board to administer an examination.

Section 301.253(d) states that the Board shall determine the criteria that determine a passing score on the examination. The criteria may not exceed those required by the majority of the states.

Section 301.253(e) provides that a written examination prepared, approved, or offered by the Board, including a standardized national examination, must be validated by an independent testing professional.

Section 301.253(f) states that the Board shall develop a written refund policy regarding examination fees that: (1) defines the reasonable notification period and the emergencies that would qualify for a refund; and (2) does not conflict with any examination fee or refund policy of the testing service involved in administering the examination.

Section 301.253(g) states that the Board may recommend to a national testing service selected by the Board to offer examinations under this section the Board's written policy for refunding an examination fee for an applicant who: (1) provides advance
notice of the applicant’s inability to take the examination; or (2) is unable to take the examination because of an emergency. Section 55.041(a) provides that, notwithstanding any other law, a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

Section 55.041(b) states that before engaging in the practice of the business or occupation, the military spouse must: (1) notify the applicable state agency that is responsible for the regulation of the profession represented by the military spouse’s license; (2) submit to the agency proof of the spouse’s residency in this state and a copy of the spouse’s military identification card; (3) receive from the agency confirmation that: (A) the agency has verified the spouse’s license in the other jurisdiction; and (B) the spouse is authorized to engage in the business or occupation in accordance with this section.

Section 55.041(c) provides that the military spouse shall comply with all other laws and regulations applicable to the business or occupation in this state.

Section 55.041(d) states that a military spouse may engage in the business or occupation under the authority of this section only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in this state but not to exceed three years from the date the spouse receives the confirmation described §55.041(b)(3).

Section 55.041(e) provides that a state agency that issues a license shall adopt rules to implement this section. The rules must establish a process for the agency to: (1) identify, with respect to each type of license issued by the agency, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in this state; and (2) verify that a military spouse is licensed in good standing in a jurisdiction described by Subdivision (1).

Section 55.041(f) provides that, in addition to the rules adopted under §55.041(e), a state agency that issues a license may adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under §55.041(b)(3). A license issued under this subsection must expire not later than the third anniversary of the date the agency provided the confirmation and may not be renewed. A state agency may not charge a fee for the issuance of the license.

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

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.68

The Texas Board of Veterinary Medical Examiners (Board) adopts new §573.68, concerning telemedicine. The new rule is adopted without changes to the proposed text as published in the August 16, 2019, issue of the Texas Register (44 TexReg 4288) and will not be republished.

Reasoned Justification and Factual Basis

The purpose of the new rule is to compile current regulations concerning telemedicine for the ease and convenience of the regulated population. The new rule merely restates existing law and does not add or modify existing regulations in any manner.

Summary of Comments and Agency Response

The agency received no public comment on this proposed rule.

Statutory Authority

The new rule is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter.

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

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 January 7, 2020.

TRD-202000093

John Helenberg
Executive Director

Texas Board of Veterinary Medical Examiners

Effective date: January 27, 2020

Proposal publication date: August 16, 2019

For further information, please call: (512) 305-7573

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) adopts the repeal of §575.25, concerning Recommended Schedule of Sanctions. The repeal is adopted without changes to the proposed text as published in the August 16, 2019, issue of the Texas Register (44 TexReg 4289) and will not be republished.

Reasoned Justification and Factual Basis

This repeal is necessary because the Board is simultaneously adopting a new rule that outlines a new and updated schedule of sanctions. It is the goal of this new schedule of sanctions to bring more uniformity and predictability to the Board’s disciplinary process.

Summary of Comments and Agency Response

The agency did not receive any public comments that concerned the proposed repeal of this rule.

Statutory Authority
The repeal is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of 801.411, Occupations Code, which states that the Board shall adopt a schedule of penalties, disciplinary actions, and other sanctions the board may impose under this chapter.

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

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

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TRD-202000090
John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: January 27, 2020
Proposal publication date: August 16, 2019
For further information, please call: (512) 305-7573

22 TAC §575.25
The Texas Board of Veterinary Medical Examiners (Board) adopts new §575.25, concerning Schedule of Sanctions. The new rule is adopted with changes to the proposed text as published in the August 16, 2019, issue of the Texas Register (44 TexReg 4290) and will be republished.

Reasoned Justification and Factual Basis
The purpose of the new rule is to provide greater uniformity and fairness in the Board's disciplinary process. This schedule of sanctions should provide clarity to both the licensees and the public about the recourse available to the Board in pursuing a complaint.

Summary of Comments and Agency Response
The Board received public comment regarding the application of the schedule of sanctions, the confidentiality provision and the standard of care provision.

In response to the concerns expressed over the applicability of the proposed rule, the proposed schedule of sanctions should be utilized by any finder of fact, which includes any Board disciplinary processes or proceedings before the State Office of Administrative Hearings. In addition, there were questions about utilizing all listed disciplinary actions in each grid on the schedule of sanctions chart. It is not the Board's intention to utilize each listed disciplinary action but allow the Board the flexibility to choose which sanctions are most appropriate in any given scenario.

The Board received comments on the provision in the confidentiality section that creates a Class C offense should a veterinarian reveal confidential information when rebutting a social media post. Commenters wanted a harsher penalty, but the Board felt that there was sufficient flexibility in the aggravating factors that a harsher punishment would be inconsistent with the rest of the proposed schedule of sanctions.

Finally, the Board received comments on the standard of care provisions in the proposed schedule of sanctions. A proposal for considering the emotional suffering by an animal's owner as an aggravating factor was ultimately rejected. The Board felt that the quality of veterinary care should not be contingent on the quality of the relationship between pet and owner.

Statutory Authority
The new rule is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of 801.411, Occupations Code, which states that the Board shall adopt a schedule of penalties, disciplinary actions and other sanctions that the board may impose under this chapter.

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

§575.25. Schedule of Sanctions.
This Schedule of Sanctions shall be used to assess the appropriate sanction to be imposed upon a licensee that is subject to disciplinary action.
Figure: 22 TAC §575.25
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 January 7, 2020.

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John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: January 27, 2020
Proposal publication date: August 16, 2019
For further information, please call: (512) 305-7573

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 131. Freestanding Emergency Medical Care Facilities
The Texas Health and Human Services Commission (HHSC) adopts amendments to §131.2, concerning Definitions; and §131.46, concerning Emergency Services. The amendments are adopted without changes to the proposed text as published in the September 13, 2019, issue of the Texas Register (44 TexReg 4935), and therefore will not be republished.

Background and Justification
These amendments are necessary to comply with House Bill (H.B.) 3152, 85th Legislature, Regular Session, 2017, which amends the Texas Health and Safety Code, Chapter 323. H.B. 3152 requires HHSC to define facilities as sexual assault forensic exam-ready (SAFE-ready) facilities, and requires certain health-care facilities to provide sexual assault survivors the option to transfer to a facility that is SAFE-ready. The amendment to §131.46 also implements H.B. 4531, 86th Legislature, Regular Session, 2019, concerning the rights and treatment of and services provided to certain adult sexual assault survivors.

Comments
The 31-day comment period ended on October 14, 2019. During this period, HHSC did not receive any comments regarding the proposed rules.
SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §131.2

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, and under Texas Health and Safety Code, Chapter 323.

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 January 13, 2020.

TRD-202000113
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: February 2, 2020
Proposal publication date: September 13, 2019
For further information, please call: (512) 834-4591

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §131.46

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, and under Texas Health and Safety Code, Chapter 323.

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 January 6, 2020.

TRD-202000034
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: January 26, 2020
Proposal publication date: September 13, 2019
For further information, please call: (512) 834-4591

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §131.45

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §131.45, concerning Facility Staffing and Training. The amendment to §131.45 is adopted without changes to the proposed text as published in the September 13, 2019, issue of the Texas Register (44 TexReg 4937), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of this amendment is to update the requirements for establishing a nursing peer review committee. The amendment to §131.45 is necessary to comply with House Bill (H.B.) 3296, 85th Legislature, Regular Session, 2017, which amended the Texas Occupations Code, Chapter 303, related to nursing peer review committees.

COMMENTS

The 31-day comment period ended October 14, 2019.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment to §131.45 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, and the Texas Occupations Code, Chapter 303.

The amendment implements Texas Government Code §531.0055 and Texas Occupations Code, Chapter 303.

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 January 13, 2020.

TRD-202000114
Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: September 13, 2019
For further information, please call: (512) 834-4591

CHAPTER 133. HOSPITAL LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §133.2, concerning Definitions, and §133.41, concerning Hospital Functions and Services. Section 133.2 is adopted without changes to the proposed text as published in the September 13, 2019, issue of the Texas Register (44 TexReg 4939). This rule will not be republished.

Section 133.41 is adopted with changes to the proposed text as published in the September 13, 2019, issue of the Texas Register (44 TexReg 4939). This rule will be republished.

BACKGROUND AND JUSTIFICATION

These amendments are necessary to comply with House Bill (H.B.) 3152, 85th Legislature, Regular Session, 2017, which amends the Texas Health and Safety Code, Chapter 323. H.B. 3152, requires HHSC to define facilities as sexual assault forensic exam-ready (SAFE-ready) facilities, and requires certain health-care facilities to provide sexual assault survivors the option to transfer to a facility that is SAFE-ready. The amendments to §133.41 implement H.B. 4531, 86th Legislature, Regular Session, 2019, concerning the rights and treatment of and
services provided to certain adult sexual assault survivors; and
H.B. 531, 86th Legislature, Regular Session, 2019, concerning
the retention of medical records from the forensic examination
of a sexual assault survivor.

COMMENTS
The 31-day comment period ended on October 14, 2019. During
this period, HHSC did not receive any comments regarding the
proposed rules.

A minor addition was made to §133.41(j) to implement H.B. 531
and maintain compliance with the current medical record preserva-
tion standards outlined under Texas Health and Safety Code, Chapter 241.

SUBCHAPTER A. GENERAL PROVISIONS
25 TAC §133.2
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, and the
Texas Health and Safety Code, Chapter 323 and Chapter 241.

The agency certifies that legal counsel has reviewed the adoption
and found it to be a valid exercise of the agency’s legal au-
thority.

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2020.
TRD-202000116
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: February 2, 2020
Proposal publication date: September 13, 2019
For further information, please call: (512) 834-4591

SUBCHAPTER C. OPERATIONAL
REQUIREMENTS
25 TAC §133.41
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, and the
Texas Health and Safety Code, Chapter 323 and Chapter 241.

§133.41. Hospital Functions and Services.
(a) Anesthesia services. If the hospital furnishes anesthesia
services, these services shall be provided in a well-organized manner
under the direction of a qualified physician in accordance with the Med-
ical Practice Act and the Nursing Practice Act. The hospital is responsi-
ble for and shall document all anesthesia services administered in the
hospital.

(1) Organization and staffing. The organization of anes-
thesia services shall be appropriate to the scope of the services offered.
Only personnel who have been approved by the facility to provide anes-
thesia services shall administer anesthesia. All approvals or delega-
tions of anesthesia services as authorized by law shall be documented
and include the training, experience, and qualifications of the person
who provided the service.

(2) Delivery of services. Anesthesia services shall be con-
sistent with needs and resources. Policies on anesthesia procedure shall
include the delineation of pre-anesthesia and post-anesthesia responsi-
bilities. The policies shall ensure that the following are provided for
each patient.

(A) A pre-anesthesia evaluation by an individual qual-
ified to administer anesthesia under paragraph (1) of this subsection
shall be performed within 48 hours prior to surgery.

(B) An intraoperative anesthesia record shall be pro-
vided. The record shall include any complications or problems occur-
ring during the anesthesia including time, description of symptoms,
review of affected systems, and treatments rendered. The record shall
 correlate with the controlled substance administration record.

(C) A post-anesthesia follow-up report shall be written
by the person administering the anesthesia before transferring the pa-
atient from the post-anesthesia care unit and shall include evaluation
for recovery from anesthesia, level of activity, respiration, blood pressure,
level of consciousness, and patient’s oxygen saturation level.

(i) With respect to inpatients, a post-anesthesia eval-
uation for proper anesthesia recovery shall be performed after transfer
from the post-anesthesia care unit and within 48 hours after surgery
by the person administering the anesthesia, registered nurse (RN), or
physician in accordance with policies and procedures approved by the
medical staff and using criteria written in the medical staff bylaws for
postoperative monitoring of anesthesia.

(ii) With respect to outpatients, immediately prior to
discharge, a post-anesthesia evaluation for proper anesthesia recovery
shall be performed by the person administering the anesthesia, RN, or
physician in accordance with policies and procedures approved by the
medical staff and using criteria written in the medical staff bylaws for
postoperative monitoring of anesthesia.

(b) Chemical dependency services.

(1) Chemical dependency unit. A hospital may not admit
patients to a chemical dependency services unit unless the unit is
approved by the Department of State Health Services (department) as
meeting the requirements of §133.163(q) of this title (relating to Spat-
ial Requirements for New Construction).

(2) Admission criteria. A hospital providing chemical de-
dependency services shall have written admission criteria that are applied
uniformly to all patients who are admitted to the chemical dependency
unit.

(A) The hospital’s admission criteria shall include pro-
cedures to prevent the admission of minors for a condition which is not
generally recognized as responsive to treatment in an inpatient setting
for chemical dependency services.

(i) The following conditions are not generally rec-
ognized as responsive to treatment in a treatment facility for chemi-
cal dependency unless the minor to be admitted is qualified because of
other disabilities, such as:

(II) learning disabilities; or
(III) psychiatric disorders.
(ii) A minor may be qualified for admission based on other disabilities which would be responsive to chemical dependency services.

(iii) A minor patient shall be separated from adult patients.

(B) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(C) A voluntarily admitted patient shall sign an admission consent form prior to admission to a chemical dependency unit which includes verification that the patient has been informed of the services to be provided and the estimated charges.

(3) Compliance. A hospital providing chemical dependency services in an identifiable unit within the hospital shall comply with Chapter 448, Subchapter B of this title (relating to Standard of Care Applicable to All Providers).

(c) Comprehensive medical rehabilitation services.

(1) Rehabilitation units. A hospital may not admit patients to a comprehensive medical rehabilitation services unit unless the unit is approved by the department as meeting the requirements of §133.163(z) of this title.

(2) Equipment and space. The hospital shall have the necessary equipment and sufficient space to implement the treatment plan described in paragraph (7)(C) of this subsection and allow for adequate care. Necessary equipment is all equipment necessary to comply with all parts of the written treatment plan. The equipment shall be on-site or available through an arrangement with another provider. Sufficient space is the physical area of a hospital which in the aggregate, constitutes the total amount of the space necessary to comply with the written treatment plan.

(3) Emergency requirements. Emergency personnel, equipment, supplies and medications for hospitals providing comprehensive medical rehabilitation services shall be as follows.

(A) A hospital that provides comprehensive medical rehabilitation services shall have emergency equipment, supplies, medications, and designated personnel assigned for providing emergency care to patients and visitors.

(B) The emergency equipment, supplies, and medications shall be properly maintained and immediately accessible to all areas of the hospital. The emergency equipment shall be periodically tested according to the policy adopted, implemented and enforced by the hospital.

(C) At a minimum, the emergency equipment and supplies shall include those specified in subsection (e)(4) of this section.

(D) The personnel providing emergency care in accordance with this subsection shall be staffed for 24-hour coverage and accessible to all patients receiving comprehensive medical rehabilitation services. At least one person who is qualified by training to perform advanced cardiac life support and administer emergency drugs shall be on duty each shift.

(E) All direct patient care licensed personnel shall maintain current certification in cardiopulmonary resuscitation (CPR).

(4) Medications. A rehabilitation hospital's governing body shall adopt, implement and enforce policies and procedures that require all medications to be administered by licensed nurses, physicians, or other licensed professionals authorized by law to administer medications.

(5) Organization and Staffing.

(A) A hospital providing comprehensive medical rehabilitation services shall be organized and staffed to ensure the health and safety of the patients.

(i) All provided services shall be consistent with accepted professional standards and practice.

(ii) The organization of the services shall be appropriate to the scope of the services offered.

(iii) The hospital shall adopt, implement and enforce written patient care policies that govern the services it furnishes.

(B) The provision of comprehensive medical rehabilitation services in a hospital shall be under the medical supervision of a physician who is on duty and available, or who is on-call 24 hours each day.

(C) A hospital providing comprehensive medical rehabilitation services shall have a medical director or clinical director who supervises and administers the provision of comprehensive medical rehabilitation services.

(i) The medical director or clinical director shall be a physician who is board certified or eligible for board certification in physical medicine and rehabilitation, orthopedics, neurology, neurosurgery, internal medicine, or rheumatology as appropriate for the rehabilitation program.

(ii) The medical director or clinical director shall be qualified by training or at least two years training and experience to serve as medical director or clinical director. A person is qualified under this subsection if the person has training and experience in the treatment of rehabilitation patients in a rehabilitation setting.

(6) Admission criteria. A hospital providing comprehensive medical rehabilitation services shall have written admission criteria that are applied uniformly to all patients who are admitted to the comprehensive medical rehabilitation unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of a minor for a condition which is not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services.

(i) The following conditions are not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services unless the minor to be admitted is qualified because of other disabilities, such as:

   (I) cognitive disabilities due to intellectual disability;

   (II) learning disabilities; or

   (III) psychiatric disorders.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to comprehensive medical rehabilitation services.

(B) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(7) Care and services.
(A) A hospital providing comprehensive medical rehabilitation services shall use a coordinated interdisciplinary team which is directed by a physician and which works in collaboration to develop and implement the patient's treatment plan.

(i) The interdisciplinary team for comprehensive medical rehabilitation services shall have available to it, at the hospital at which the services are provided or by contract, members of the following professions as necessary to meet the treatment needs of the patient:

(I) physical therapy;
(II) occupational therapy;
(III) speech-language pathology;
(IV) therapeutic recreation;
(V) social services and case management;
(VI) dietetics;
(VII) psychology;
(VIII) respiratory therapy;
(IX) rehabilitative nursing;
(X) certified orthotics;
(XI) certified prosthetics;
(XII) pharmaceutical care; and
(XIII) in the case of a minor patient, persons who have specialized education and training in emotional, mental health, or chemical dependency problems, as well as the treatment of minors.

(ii) The coordinated interdisciplinary team approach used in the rehabilitation of each patient shall be documented by periodic entries made in the patient's medical record to denote:

(I) the patient's status in relationship to goal attainment; and

(II) that team conferences are held at least every two weeks to determine the appropriateness of treatment.

(B) An initial assessment and preliminary treatment plan shall be performed or established by the physician within 24 hours of admission.

(C) The physician in coordination with the interdisciplinary team shall establish a written treatment plan for the patient within seven working days of the date of admission.

(i) Comprehensive medical rehabilitation services shall be provided in accordance with the written treatment plan.

(ii) The treatment provided under the written treatment plan shall be provided by staff who are qualified to provide services under state law. The hospital shall establish written qualifications for services provided by each discipline for which there is no applicable state statute for professional licensure or certification.

(iii) Services provided under the written treatment plan shall be given in accordance with the orders of physicians, dentists, podiatrists or practitioners who are authorized by the governing body, hospital administration, and medical staff to order the services, and the orders shall be incorporated in the patient's record.

(iv) The written treatment plan shall delineate anticipated goals and specify the type, amount, frequency, and anticipated duration of service to be provided.

(v) Within 10 working days after the date of admission, the written treatment plan shall be provided. It shall be in the person's primary language, if practicable. What is or would have been practicable shall be determined by the facts and circumstances of each case. The written treatment plan shall be provided to:

(I) the patient;

(II) a person designated by the patient; and

(III) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(vi) The written treatment plan shall be reviewed by the interdisciplinary team at least every two weeks.

(vii) The written treatment plan shall be revised by the interdisciplinary team if a comprehensive reassessment of the patient's status or the results of a patient case review conference indicates the need for revision.

(viii) The revision shall be incorporated into the patient's record within seven working days after the revision.

(ix) The revised treatment plan shall be reduced to writing in the person's primary language, if practicable, and provided to:

(I) the patient;

(II) a person designated by the patient; and

(III) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(8) Discharge and continuing care plan. The patient's interdisciplinary team shall prepare a written continuing care plan that addresses the patient's needs for care after discharge.

(A) The continuing care plan for the patient shall include recommendations for treatment and care and information about the availability of resources for treatment or care.

(B) If the patient's interdisciplinary team deems it impracticable to provide a written continuing care plan prior to discharge, the patient's interdisciplinary team shall provide the written continuing care plan to the patient within two working days after the date of discharge.

(C) Prior to discharge or within two working days after the date of discharge, the written continuing care plan shall be provided in the person's primary language, if practicable, to:

(I) the patient;

(II) a person designated by the patient; and

(III) upon request, to a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(d) Dietary services. The hospital shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a hospital that has a contract with an outside food management company or an arrangement with another hospital may meet this requirement if the company or other hospital has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company or other hospital maintains at least the minimum requirements...
specified in this section, and provides for the frequent and systematic liaison with the hospital medical staff for recommendations of dietetic policies affecting patient treatment. The hospital shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) Organization.

(A) The hospital shall have a full-time employee who is qualified by experience or training to serve as director of the food and dietary service, and be responsible for the daily management of the dietary services.

(B) There shall be a qualified dietitian who works full-time, part-time, or on a consultant basis. If by consultation, such services shall occur at least once per month for not less than eight hours. The dietitian shall:

(i) be currently licensed under the laws of this state to use the titles of licensed dietitian or provisional licensed dietitian, or be a registered dietitian;

(ii) maintain standards for professional practice;

(iii) supervise the nutritional aspects of patient care;

(iv) make an assessment of the nutritional status and adequacy of nutritional regimen, as appropriate;

(v) provide diet counseling and teaching, as appropriate;

(vi) document nutritional status and pertinent information in patient medical records, as appropriate;

(vii) approve menus; and

(viii) approve menu substitutions.

(C) There shall be administrative and technical personnel competent in their respective duties. The administrative and technical personnel shall:

(i) participate in established departmental or hospital training pertinent to assigned duties;

(ii) conform to food handling techniques in accordance with paragraph (2)(E)(viii) of this subsection;

(iii) adhere to clearly defined work schedules and assignment sheets; and

(iv) comply with position descriptions which are job specific.

(2) Director. The director shall:

(A) comply with a position description which is job specific;

(B) clearly delineate responsibility and authority;

(C) participate in conferences with administration and department heads;

(D) establish, implement, and enforce policies and procedures for the overall operational components of the department to include, but not be limited to:

(i) quality assessment and performance improvement program;

(ii) frequency of meals served;

(iii) nonroutine occurrences; and

(iv) identification of patient trays; and

(E) maintain authority and responsibility for the following, but not be limited to:

(i) orientation and training;

(ii) performance evaluations;

(iii) work assignments;

(iv) supervision of work and food handling techniques;

(v) procurement of food, paper, chemical, and other supplies, to include implementation of first-in first-out rotation system for all food items;

(vi) ensuring there is a four-day food supply on hand at all times;

(vii) menu planning; and

(viii) ensuring compliance with Chapter 228 of this title (relating to Retail Food).

(3) Diets. Menus shall meet the needs of the patients.

(A) Therapeutic diets shall be prescribed by the physician(s) responsible for the care of the patients. The dietary department of the hospital shall:

(i) establish procedures for the processing of therapeutic diets to include, but not be limited to:

(I) accurate patient identification;

(II) transcription from nursing to dietary services;

(III) diet planning by a dietitian;

(IV) regular review and updating of diet when necessary; and

(V) written and verbal instruction to patient and family. It shall be in the patient's primary language, if practicable, prior to discharge. What is or would have been practicable shall be determined by the facts and circumstances of each case;

(ii) ensure that therapeutic diets are planned in writing by a qualified dietitian;

(iii) ensure that menu substitutions are approved by a qualified dietitian;

(iv) document pertinent information about the patient's response to a therapeutic diet in the medical record; and

(v) evaluate therapeutic diets for nutritional adequacy.

(B) Nutritional needs shall be met in accordance with recognized dietary practices and in accordance with orders of the physician(s) or appropriately credentialed practitioner(s) responsible for the care of the patients. The following requirements shall be met.

(i) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal according to the guidance provided in the Recommended Dietary Allowances (RDA), as published by the Food and Nutrition Board, Commission on Life Sciences, National Research Council, Tenth edition, 1989, which may be obtained by writing the National Academies Press, 500 Fifth Street, NW Lockbox 285, Washington, D.C. 20055; telephone (888) 624-8373.

(ii) A maximum of 15 hours shall not be exceeded between the last meal of the day (i.e. supper) and the breakfast meal, unless a substantial snack is provided. The hospital shall adopt, im-
plement, and enforce a policy on the definition of "substantial" to meet each patient's varied nutritional needs.

(C) A current therapeutic diet manual approved by the dietitian and medical staff shall be readily available to all medical, nursing, and food service personnel. The therapeutic manual shall:

(i) be revised as needed, not to exceed 5 years;
(ii) be appropriate for the diets routinely ordered in the hospital;
(iii) have standards in compliance with the RDA;
(iv) contain specific diets which are not in compliance with RDA; and
(v) be used as a guide for ordering and serving diets.

(e) Emergency services. All licensed hospital locations, including multiple-location sites, shall have an emergency suite that complies with §133.163(f) of this title, and the following.

(1) Organization. The organization of the emergency services shall be appropriate to the scope of the services offered.

(A) The services shall be organized under the direction of a qualified member of the medical staff who is the medical director or clinical director.

(B) The services shall be integrated with other departments of the hospital.

(C) The policies and procedures governing medical care provided in the emergency suite shall be established by and shall be a continuing responsibility of the medical staff.

(D) Medical records indicating patient identification, complaint, physician, nurse, time admitted to the emergency suite, treatment, time discharged, and disposition shall be maintained for all emergency patients.

(E) Each freestanding emergency medical care facility shall advertise as an emergency room. The facility shall display notice that it functions as an emergency room.

(i) The notice shall explain that patients who receive medical services will be billed according to comparable rates for hospital emergency room services in the same region.

(ii) The notice shall be prominently and conspicuously posted for display in a public area of the facility that is readily available to each patient, managing conservator, or guardian. The postings shall be easily readable and consumer-friendly. The notice shall be in English and in a second language appropriate to the demographic makeup of the community served.

(2) Personnel.

(A) There shall be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the hospital.

(B) Except for comprehensive medical rehabilitation hospitals and pediatric and adolescent hospitals that generally provide care that is not administered for or in expectation of compensation:

(i) there shall be on duty and available at all times at least one person qualified as determined by the medical staff to initiate immediate appropriate lifesaving measures; and

(ii) in general hospitals where the emergency treatment area is not contiguous with other areas of the hospital that maintain 24 hour staffing by qualified staff (including but not limited to separation by one or more floors in multiple-occupancy buildings), qualified personnel must be physically present in the emergency treatment area at all times.

(C) Except for comprehensive medical rehabilitation hospitals and pediatric and adolescent hospitals that generally provide care that is not administered for or in expectation of compensation, the hospital shall provide that one or more physicians shall be available at all times for emergencies, as follows.

(i) General hospitals, except for hospitals designated as critical access hospitals (CAHs) by the Centers for Medicare & Medicaid Services (CMS), located in counties with a population of 100,000 or more shall have a physician qualified to provide emergency medical care on duty in the emergency treatment area at all times.

(ii) Special hospitals, hospitals designated as CAHs by the CMS, and general hospitals located in counties with a population of less than 100,000 shall have a physician on-call and able to respond in person, or by radio or telephone within 30 minutes.

(D) Schedules, names, and telephone numbers of all physicians and others on emergency call duty, including alternates, shall be maintained. Schedules shall be retained for no less than one year.

(3) Supplies and equipment. Adequate age appropriate supplies and equipment shall be available and in readiness for use. Equipment and supplies shall be available for the administration of intravenous medications as well as facilities for the control of bleeding and emergency splinting of fractures. Provision shall be made for the storage of blood and blood products as needed. The emergency equipment shall be periodically tested according to the policy adopted, implemented and enforced by the hospital.

(4) Required emergency equipment. At a minimum, the age appropriate emergency equipment and supplies shall include the following:

(A) emergency call system;
(B) oxygen;
(C) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and mask;
(D) cardiac defibrillator;
(E) cardiac monitoring equipment;
(F) laryngoscopes and endotracheal tubes;
(G) suction equipment;
(H) emergency drugs and supplies specified by the medical staff;
(I) stabilization devices for cervical injuries;
(J) blood pressure monitoring equipment; and
(K) pulse oximeter or similar medical device to measure blood oxygenation.

(5) Participation in local emergency medical service (EMS) system.

(A) General hospitals shall participate in the local EMS system, based on the hospital's capabilities and capacity, and the locale's existing EMS plan and protocols.
(B) The provisions of subparagraph (A) of this paragraph do not apply to a comprehensive medical rehabilitation hospital or a pediatric and adolescent hospital that generally provides care that is not administered for or in expectation of compensation.

(6) Emergency services for sexual assault survivors. This section does not affect the duty of a health care facility to comply with the requirements of the federal Emergency Medical Treatment and Active Labor Act of 1986 (42 U.S.C. §1395dd) that are applicable to the facility. The hospital shall develop, implement, and enforce policies and procedures to ensure that after a sexual assault survivor presents to the hospital following a sexual assault, the hospital shall provide the care specified under the Health and Safety Code, Chapter 323.

(f) Governing body.

(1) Legal responsibility. There shall be a governing body responsible for the organization, management, control, and operation of the hospital, including appointment of the medical staff. For hospitals owned and operated by an individual or by partners, the individual or partners shall be considered the governing body.

(2) Organization. The governing body shall be formally organized in accordance with a written constitution and bylaws which clearly set forth the organizational structure and responsibilities.

(3) Meeting records. Records of governing body meetings shall be maintained.

(4) Responsibilities relating to the medical staff.

(A) The governing body shall ensure that the medical staff has current bylaws, rules, and regulations which are implemented and enforced.

(B) The governing body shall approve medical staff bylaws and other medical staff rules and regulations.

(C) In hospitals that provide obstetrical services, the governing body shall ensure that the hospital collaborates with physicians providing services at the hospital to develop quality initiatives, through the adoption, implementation, and enforcement of appropriate hospital policies and procedures, to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation.

(D) In hospitals that provide obstetrical services, the governing body shall ensure that the hospital implements a newborn audiological screening program, consistent with the requirements of Health and Safety Code, Chapter 47 (Hearing Loss in Newborns), and performs, either directly or through a referral to another program, audiological screenings for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged. These audiological screenings are required to be performed on all newborns or infants before discharge from the facility unless:

(i) a parent or legal guardian of the newborn or infant declares the screening;

(ii) the newborn or infant requires emergency transfer to a tertiary care facility prior to the completion of the screening;

(iii) the screening previously has been completed; or

(iv) the newborn was discharged from the facility not more than 10 hours after birth and a referral for the newborn was made to another program.

(E) In hospitals that provide obstetrical services, the governing body shall adopt, implement, and enforce policies and procedures related to the testing of any newborn for critical congenital heart disease (CCHD) that may present themselves at birth. The facility shall implement testing programs for all infants born at the facility for CCHD. In the event that a newborn is presented at the emergency room following delivery at a birthing center or a home birth that may or may not have been assisted by a midwife, the facility shall ascertain if any testing for CCHD had occurred and, if not, shall provide the testing necessary to make such determination. The rules concerning the CCHD procedures and requirements are described in Chapter 37, Maternal and Infant Health Services, Subchapter E, Newborn Screening for Critical Congenital Heart Disease, §§37.75 - 37.79 of this title.

(F) The governing body shall determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff.

(i) In considering applications for medical staff membership and privileges or the renewal, modification, or revocation of medical staff membership and privileges, the governing body must ensure that each physician, podiatrist, and dentist is afforded procedural due process.

(I) If a hospital's credentials committee has failed to take action on a completed application as required by subsection (VIII) of this clause, or a physician, podiatrist, or dentist is subject to a professional review action that may adversely affect his medical staff membership or privileges, and the physician, podiatrist, or dentist believes that mediation of the dispute is desirable, the physician, podiatrist, or dentist may require the hospital to participate in mediation as provided in Civil Practice and Remedies Code (CPRC), Chapter 154. The mediation shall be conducted by a person meeting the qualifications required by CPRC §154.052 and within a reasonable period of time.

(II) Subclause (I) of this clause does not authorize a cause of action by a physician, podiatrist, or dentist against the hospital other than an action to require a hospital to participate in mediation.

(III) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is otherwise prohibited by law.

(IV) A hospital's bylaw requirements for staff privileges may require a physician, podiatrist, or dentist to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested.

(V) In granting or refusing medical staff membership or privileges, a hospital may not differentiate on the basis of the academic medical degree held by a physician.

(VI) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council for Graduate Medical Education and by the American Osteopathic Association.

(VII) Board certification may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists.

(VIII) A hospital's credentials committee shall act expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application for medical staff membership or privileges. The hospital's credentials
committee shall take action on the completed application not later than the 90th day after the date on which the application is received. The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received. The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken.

(ii) The governing body is authorized to adopt, implement and enforce policies concerning the granting of clinical privileges to advanced practice registered nurses (APRNs) and physician assistants, including policies relating to the application process, reasonable qualifications for privileges, and the process for renewal, modification, or revocation of privileges.

(I) If the governing body of a hospital has adopted, implemented and enforced a policy of granting clinical privileges to APRNs or physician assistants, an individual APRN or physician assistant who qualifies for privileges under that policy shall be entitled to certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, when an application for privileges is submitted to the hospital. At a minimum, any policy adopted shall specify a reasonable period for the processing and consideration of the application and shall provide for written notification to the applicant of any final action on the application by the hospital, including any reason for denial or restriction of the privileges requested.

(II) If an APRN or physician assistant has been granted clinical privileges by a hospital, the hospital may not modify or revoke those privileges without providing certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, to the APRN or physician assistant. At a minimum, the hospital shall provide the APRN or physician assistant written reasons for the modification or revocation of privileges and a mechanism for appeal to the appropriate committee or body within the hospital, as determined by the governing body of the hospital.

(III) If a hospital extends clinical privileges to an APRN or physician assistant conditioned on the APRN or physician assistant having a sponsoring or collaborating relationship with a physician and that relationship ceases to exist, the APRN or physician assistant and the physician shall provide written notification to the hospital that the relationship no longer exists. Once the hospital receives such notice from an APRN or physician assistant and the physician, the hospital shall be deemed to have met its obligations under this section by notifying the APRN or physician assistant in writing that the APRN's or physician assistant's clinical privileges no longer exist at that hospital.

(IV) Nothing in this clause shall be construed as modifying Subtitle B, Title 3, Occupations Code, Chapter 204 or 301, or any other law relating to the scope of practice of physicians, APRNs, or physician assistants.

(V) This clause does not apply to an employer-employee relationship between an APRN or physician assistant and a hospital.

(G) The governing body shall ensure that the hospital complies with the requirements concerning physician communication and contracts as set out in Health and Safety Code, §241.1015 (Physician Communication and Contracts).

(H) The governing body shall ensure the hospital complies with the requirements for reporting to the Texas Medical Board the results and circumstances of any professional review action in accordance with the Medical Practice Act, Occupations Code, §160.002 and §160.003.

(I) The governing body shall be responsible for and ensure that any policies and procedures adopted by the governing body to implement the requirements of this chapter shall be implemented and enforced.

(5) Hospital administration. The governing body shall appoint a chief executive officer or administrator who is responsible for managing the hospital.

(6) Patient care. In accordance with hospital policy adopted, implemented and enforced, the governing body shall ensure that:

   (A) every patient is under the care of:

       (i) a physician. This provision is not to be construed to limit the authority of a physician to delegate tasks to other qualified health care personnel to the extent recognized under state law or the state's regulatory mechanism;

       (ii) a dentist who is legally authorized to practice dentistry by the state and who is acting within the scope of his or her license; or

       (iii) a podiatrist, but only with respect to functions which he or she is legally authorized by the state to perform.

   (B) patients are admitted to the hospital only by members of the medical staff who have been granted admitting privileges;

   (C) a physician is on duty or on-call at all times;

   (D) specific colored condition alert wrist bands that have been standardized for all hospitals licensed under Health and Safety Code, Chapter 241, are used as follows:

       (i) red wrist bands for allergies;

       (ii) yellow wrist bands for fall risks; and

       (iii) purple wrist bands for do not resuscitate status;

   (E) the governing body shall consider the addition of the following optional condition alert wrist bands. This consideration must be documented in the minutes of the meeting of the governing body in which the discussion was held:

       (i) green wrist bands for latex allergy; and

       (ii) pink wrist bands for restricted extremity; and

   (F) the governing body shall adopt, implement, and enforce a policy and procedure regarding the removal of personal wrist bands and bracelets as well as a patient's right to refuse to wear condition alert wrist bands; and

   (G) the governing body shall adopt, implement, and enforce policies and procedures regarding DNR orders issued in the hospital by the attending physician that comply with Health and Safety Code, Chapter 166, Subchapter E (relating to Health Care Facility Do-Not-Resuscitate Orders), including policies and procedures regarding the rights of a patient and person authorized to make treatment decisions regarding the patient's DNR status; notice and medical record requirements for DNR orders and revocations; and actions the attending physician and hospital must take pursuant to Health and Safety Code §166.206 when the attending physician or hospital and the patient or person authorized to make treatment decisions regarding the patient's DNR status are in disagreement about the execution of,
or compliance with, a DNR order. The policies and procedures shall include that:

(i) Except in circumstances described by Health and Safety Code §166.203(a)(2), a DNR order issued for a patient is valid only if the attending physician issues the order, the order is dated, and the order is issued in compliance with:

(I) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(II) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Health and Safety Code §166.003(2)(E) or (F);

(III) the directions in an advance directive enforceable under Health and Safety Code §166.005 or executed in accordance with Health and Safety Code §§166.032, 166.034, or 166.035;

(IV) the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with Health and Safety Code, Chapter 166, Subchapter D (relating to Medical Power of Attorney); or

(V) a treatment decision made in accordance with Health Safety Code §166.039.

(ii) A DNR order that is not issued in accordance with Health and Safety Code §166.203(a)(1) is valid only if the patient's attending physician issues the order, the order is dated, and:

(I) the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions;

(II) in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and

(III) in the reasonable medical judgment of the patient's attending physician, the DNR order is medically appropriate.

(iii) A DNR order takes effect at the time the order is issued, as provided by Health and Safety Code §166.203(b).

(iv) Before placing in a patient's medical record a DNR order described by Health and Safety Code §166.203(a)(2), the physician, physician assistant, nurse, or other person acting on behalf of the hospital shall:

(I) notify the patient of the order's issuance; or

(II) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and notify of the order's issuance the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Health and Safety Code §166.039(b)(1), (2), or (3).

(v) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if the patient, or the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent:

(I) effectively revokes an advance directive, in accordance with Health and Safety Code §166.042, for which a DNR order is issued under Health and Safety Code §166.203(a); or

(II) expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Health and Safety Code §166.203(a).

(vi) A person providing direct care to a patient under the supervision of a physician shall notify the physician of a request to revoke a DNR order under Health and Safety Code §166.205(a).

(vii) A patient's attending physician may at any time revoke a DNR order executed under Health and Safety Code §166.203(a)(2).

(viii) On admission to the hospital, the hospital shall provide to the patient or person authorized to make treatment decisions regarding the patient's DNR status notice of the policies and procedures adopted under this subparagraph.

(7) Services. The governing body shall be responsible for all services furnished in the hospital, whether furnished directly or under contract. The governing body shall ensure that services are provided in a safe and effective manner that permits the hospital to comply with applicable rules and standards. At hospitals that have a mental health service unit, the governing body shall adopt, implement, and enforce procedures for the completion of criminal background checks on all prospective employees that would be considered for assignment to that unit, except for persons currently licensed by this state as health professionals.

(8) Nurse Staffing. The governing body shall adopt, implement and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The governing body policy shall require that hospital administration adopt, implement and enforce a nurse staffing plan and policies that:

(A) require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(B) are based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(C) ensure that all nursing assignments consider client safety, and are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(D) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(E) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(F) protect from retaliation nurses who provide input to the nurse staffing committee; and

(G) comply with subsection (o) of this section.

(9) Photo identification badge. The governing body shall adopt a policy requiring employees, physicians, contracted employees, and individuals in training who provide direct patient care at the hospital to wear a photo identification badge during all patient encounters, unless precluded by adopted isolation or sterilization protocols. The badge must be of sufficient size and worn in a manner to be visible and must clearly state:

(A) at minimum the individual's first or last name;

(B) the department of the hospital with which the individual is associated;

(C) the type of license held by the individual, if applicable under Title 3, Occupations Code; and

(D) the provider's status as a student, intern, trainee, or resident, if applicable.
g) Infection control. The hospital shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There shall be an active program for the prevention, control, and surveillance of infections and communicable diseases.

(1) Organization and policies. A person shall be designated as infection control professional. The hospital shall ensure that policies governing prevention, control and surveillance of infections and communicable diseases are developed, implemented and enforced.

(A) There shall be a system for identifying, reporting, investigating, and controlling health care associated infections and communicable diseases between patients and personnel.

(B) The infection control professional shall maintain a log of all reportable diseases and health care associated infections designated as epidemiologically significant according to the hospital’s infection control policies.

(C) A written policy shall be adopted, implemented and enforced for reporting all reportable diseases to the local health authority and the Infectious Disease Surveillance and Epidemiology Branch, Department of State Health Services, Mail Code 2822, P.O. Box 149347, Austin, Texas 78714-9347, in accordance with Chapter 97 of this title (relating to Communicable Diseases), and Health and Safety Code, §§98.103, 98.104, and 98.1045 (relating to Reportable Infections, Alternative for Reportable Surgical Site Infections, and Reporting of Preventable Adverse Events).

(D) The infection control program shall include active participation by the pharmacist.

(2) Responsibilities of the chief executive officer (CEO), medical staff, and chief nursing officer (CNO). The CEO, the medical staff, and the CNO shall be responsible for the following.

(A) The hospital-wide quality assessment and performance improvement program and training programs shall address problems identified by the infection control professional.

(B) Successful corrective action plans in affected problem areas shall be implemented.

(3) Universal precautions. The hospital shall adopt, implement, and enforce a written policy to monitor compliance of the hospital and its personnel and medical staff with universal precautions in accordance with HSC Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection.

(h) Laboratory services. The hospital shall maintain directly, or have available adequate laboratory services to meet the needs of its patients.

(1) Hospital laboratory services. A hospital that provides laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in 42 Code of Federal Regulations (CFR), §§493.1 - 493.1780. CLIA 1988 applies to all hospitals with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Contracted laboratory services. The hospital shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(3) Adequacy of laboratory services. The hospital shall ensure the following.

(A) Emergency laboratory services shall be available 24 hours a day.

(B) A written description of services provided shall be available to the medical staff.

(C) The laboratory shall make provision for proper receipt and reporting of tissue specimens.

(D) The medical staff and a pathologist shall determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(E) When blood and blood components are stored, there shall be written procedures readily available containing directions on how to maintain them within permissible temperatures and including instructions to be followed in the event of a power failure or other disruption of refrigeration. A label or tray with the recipient's first and last names and identification number, donor unit number and interpretation of compatibility, if performed, shall be attached securely to the blood container.

(F) The hospital shall establish a mechanism for ensuring that the patient's physician or other licensed health care professional is made aware of critical value lab results, as established by the medical staff, before or after the patient is discharged.

(4) Chemical hygiene. A hospital that provides laboratory services shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory which may occur during the normal course of job performance.

(i) Linen and laundry services. The hospital shall provide sufficient clean linen to ensure the comfort of the patient.

(1) For purposes of this subsection, contaminated linen is linen which has been soiled with blood or other potentially infectious materials or may contain sharps. Other potentially infectious materials means:

(A) the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV)-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(2) The hospital, whether it operates its own laundry or uses commercial service, shall ensure the following.

(A) Employees of a hospital involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up in-service training to ensure a safe product for patients and to safeguard employees in their work.

(B) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(C) All contaminated linen shall be placed and transported in bags or containers labeled or color-coded.
(D) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(E) Contaminated linen shall be handled as little as possible and with a minimum of agitation. Contaminated linen shall not be sorted or rinsed in patient care areas.

(F) All contaminated linen shall be bagged or put into carts at the location where it was used.
   (i) Bags containing contaminated linen shall be closed prior to transport to the laundry.
   (ii) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.
   (iii) All linen placed in chutes shall be bagged.
   (iv) If chutes are not used to convey linen to a central receiving or sorting room, then adequate space shall be allocated on the various nursing units for holding the bagged contaminated linen.

(G) Linen shall be processed as follows:
   (i) If hot water is used, linen shall be washed with detergent in water at a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes. Hot water requirements specified in Table 5 of §133.169(e) of this title (relating to Tables) shall be met.
   (ii) If low-temperature (less than or equal to 70 degrees Centigrade) (158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.
   (iii) Commercial dry cleaning of fabrics soiled with blood also renders these items free of the risk of pathogen transmission.

(H) Flammable liquids shall not be used to process laundry, but may be used for equipment maintenance.

(i) Medical record services. The hospital shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) The organization of the medical record service shall be appropriate to the scope and complexity of the services performed. The hospital shall employ or contract with adequate personnel to ensure prompt completion, filing, and retrieval of records.

(2) The hospital shall have a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with HSC, Chapter 241, Subchapter G (Disclosure of Health Care Information) and Subchapter E, §241.103 (Preservation of Records) and §241.1031 (relating to Preservation of Record from Forensic Medical Examination).

(4) The medical record shall contain information to justify admission and continued hospitalization, support the diagnosis, reflect significant changes in the patient's condition, and describe the patient's progress and response to medications and services. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible.

(5) If an attending physician issues a DNR order for a patient under Health and Safety Code, Chapter 166, Subchapter E (relating to Health Care Facility Do-Not-Resuscitate Orders), that order shall be entered into the patient medical record as soon as practicable. In the event a physician revokes a DNR order under Health and Safety Code, Chapter 166, Subchapter E, that revocation shall be entered into the patient medical record as soon as practicable. To the extent this paragraph conflicts with requirements elsewhere in this subsection, this paragraph prevails.

(6) Medical record entries must be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided, consistent with hospital policies and procedures.

(7) All orders (except verbal orders) must be dated, timed, and authenticated the next time the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders provides care to the patient, assesses the patient, or documents information in the patient's medical record.

(8) All verbal orders must be dated, timed, and authenticated within 96 hours by the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders.

(a) Use of signature stamps by physicians and other licensed practitioners credentialed by the medical staff may be allowed in hospitals when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative offices of the hospital shall have on file a signed statement to the effect that he or she is the only one who has the stamp and uses it. The use of a signature stamp by any other person is prohibited.

(b) A list of computer codes and written signatures shall be readily available and shall be maintained under adequate safeguards.

(c) Signatures by facsimile shall be acceptable. If received on a thermal machine, the facsimile document shall be copied onto regular paper.

(9) Medical records (reports and printouts) shall be retained by the hospital in their original or legally reproduced form for a period of at least ten years. A legally reproduced form is a medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium. Films, scans, and other image records shall be retained for a period of at least five years. For retention purposes, medical records that shall be preserved for ten years include:

(a) identification data;

(b) the medical history of the patient;

(c) evidence of a physical examination, including a health history, performed no more than 30 days prior to admission or within 24 hours after admission. The medical history and physical examination shall be placed in the patient's medical record within 24 hours after admission;

(d) an updated medical record entry documenting an examination for any changes in the patient's condition when the medical history and physical examination are completed within 30 days before admission. This updated examination shall be completed and documented in the patient's medical record within 24 hours after admission;

(e) admitting diagnosis;

(f) diagnostic and therapeutic orders;
(G) properly executed informed consent forms for procedures and treatments specified by the medical staff, or by federal or state laws if applicable, to require written patient consent;

(H) clinical observations, including the results of therapy and treatment, all orders, nursing notes, medication records, vital signs, and other information necessary to monitor the patient's condition;

(I) reports of procedures, tests, and their results, including laboratory, pathology, and radiology reports;

(J) results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;

(K) discharge summary with outcome of hospitalization, disposition of care, and provisions for follow-up care; and

(L) final diagnosis with completion of medical records within 30 calendar days following discharge.

(10) A hospital may not destroy a medical record from the forensic medical examination of a sexual assault victim until the 20th anniversary of the date the record was created, in accordance with HSC, Chapter 241, Subchapter E, §241.1031.

(11) If a patient was less than 18 years of age at the time he was last treated, the hospital may authorize the disposal of those medical records relating to the patient on or after the date of his 20th birthday or on or after the 10th anniversary of the date on which he was last treated, whichever date is later.

(12) The hospital shall not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved.

(13) The hospital shall provide written notice to a patient, or a patient's legally authorized representative, that the hospital may authorize the disposal of medical records relating to the patient on or after the periods specified in this section. The notice shall be provided to the patient or the patient's legally authorized representative not later than the date on which the patient who is or will be the subject of a medical record is treated, except in an emergency treatment situation. In an emergency treatment situation, the notice shall be provided to the patient or the patient's legally authorized representative as soon as is reasonably practicable following the emergency treatment situation.

(14) If a licensed hospital should close, the hospital shall notify the department at the time of closure the disposition of the medical records, including the location of where the medical records will be stored and the identity and telephone number of the custodian of the records.

(k) Medical staff.

(1) The medical staff shall be composed of physicians and may also be composed of podiatrists, dentists and other practitioners appointed by the governing body.

(A) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(B) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(2) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(A) The medical staff shall be organized in a manner approved by the governing body.

(B) If the medical staff has an executive committee, a majority of the members of the committee shall be doctors of medicine or osteopathy.

(C) Records of medical staff meetings shall be maintained.

(D) The responsibility for organization and conduct of the medical staff shall be assigned only to an individual physician.

(E) Each medical staff member shall sign a statement signifying they will abide by medical staff and hospital policies.

(3) The medical staff shall adopt, implement, and enforce bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(A) be approved by the governing body;

(B) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(C) describe the organization of the medical staff;

(D) describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body;

(E) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges;

(F) include a requirement that a physical examination and medical history be done no more than 30 days before or 24 hours after an admission for each patient by a physician or other qualified practitioner who has been granted these privileges by the medical staff. The medical history and physical examination shall be placed in the patient's medical record within 24 hours after admission. When the medical history and physical examination are completed within the 30 days before admission, an updated examination for any changes in the patient's condition must be completed and documented in the patient's medical record within 24 hours after admission; and

(G) include procedures regarding DNR orders issued in the hospital by an attending physician that comply with Health and Safety Code, Chapter 166, Subchapter E (relating to Health Care Facility Do-Not-Resuscitate Orders), including policies and procedures regarding the rights of a patient and person authorized to make treatment decisions regarding the patient's DNR status; notice and medical record requirements for DNR orders and revocations; and actions the attending physician and hospital must take pursuant to Health and Safety Code §166.206 when the attending physician or hospital and the patient or person authorized to make treatment decisions regarding the patient's DNR status are in disagreement about the execution of, or compliance with, a DNR order. The procedures shall include that:

(i) Except in circumstances described by Health and Safety Code §166.203(a)(2), a DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order is issued in compliance with:

(I) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(II) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Health and Safety Code §166.003(2)(E) or (F);
(III) the directions in an advance directive enforceable under Health and Safety Code §166.005 or executed in accordance with Health and Safety Code §§166.032, 166.034, or 166.035;

(IV) the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with Health and Safety Code, Chapter 166, Subchapter D (relating to Medical Power of Attorney); or

(V) a treatment decision made in accordance with Health Safety Code §166.039.

(ii) A DNR order that is not issued in accordance with Health and Safety Code §166.203(a)(1) is valid only if the patient's attending physician issues the order, the order is dated, and:

(I) the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions;

(II) in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and

(III) in the reasonable medical judgment of the patient's attending physician, the DNR order is medically appropriate.

(iii) A DNR order takes effect at the time the order is issued, as provided by Health and Safety Code §166.203(b).

(iv) Before placing in a patient's medical record a DNR order described by Health and Safety Code §166.203(a)(2), the physician, physician assistant, nurse, or other person acting on behalf of the hospital shall:

(I) notify the patient of the order's issuance; or

(II) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Health and Safety Code §166.039(b)(1), (2), or (3).

(v) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if the patient or the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent:

(I) effectively revokes an advance directive, in accordance with Health and Safety Code §166.042, for which a DNR order is issued under Health and Safety Code §166.203(a); or

(II) expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Health and Safety Code §166.203(a).

(vi) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order under Health and Safety Code §166.205(a).

(vii) A patient's attending physician may at any time revoke a DNR order executed under Health and Safety Code §166.203(a)(2).

(I) Mental health services.

(1) Mental health services unit. A hospital may not admit patients to a mental health services unit unless the unit is approved by the department as meeting the requirements of §133.163(q) of this title.

(2) Admission criteria. A hospital providing mental health services shall have written admission criteria that are applied uniformly to all patients who are admitted to the service.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for mental health services.

(i) The following conditions are not generally recognized as responsive to treatment in a hospital unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability; or

(II) learning disabilities.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to mental health services.

(B) The medical record shall contain evidence that admission consent was given by the patient, the patient's legal guardian, or the managing conservator, if applicable.

(C) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(D) A voluntarily admitted patient shall sign an admission consent form prior to admission to a mental health unit which includes verification that the patient has been informed of the services to be provided and the estimated charges.

(3) Compliance. A hospital providing mental health services shall comply with the following rules administered by the department. The rules are:

(A) Chapter 411, Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals);

(B) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(C) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(D) Chapter 414, Subchapter I of this title (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); and

(E) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(m) Mobile, transportable, and relocatable units. The hospital shall adopt, implement and enforce procedures which address the potential emergency needs for those inpatients who are taken to mobile units on the hospital's premises for diagnostic procedures or treatment.

(n) Nuclear medicine services. If the hospital provides nuclear medicine services, these services shall meet the needs of the patients in accordance with acceptable standards of practice and be licensed in accordance with §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material).

(1) Policies and procedures. Policies and procedures shall be adopted, implemented, and enforced which will describe the services nuclear medicine provides in the hospital and how employee and patient safety will be maintained.
(2) Organization and staffing. The organization of the nuclear medicine services shall be appropriate to the scope and complexity of the services offered.

(A) There shall be a medical director or clinical director who is a physician qualified in nuclear medicine.

(B) The qualifications, training, functions, and responsibilities of nuclear medicine personnel shall be specified by the medical director or clinical director and approved by the medical staff.

(3) Delivery of services. Radioactive materials shall be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice and in accordance with §289.256 of this title.

(A) In-house preparation of radiopharmaceuticals shall be by, or under, the direct supervision of an appropriately trained licensed pharmacist or physician.

(B) There shall be proper storage and disposal of radioactive materials.

(C) If clinical laboratory tests are performed by the nuclear medicine services staff, the nuclear medicine staff shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR Part 493.

(D) Nuclear medicine workers shall be provided personnel monitoring dosimeters to measure their radiation exposure. Exposure reports and documentation shall be available for review.

(4) Equipment and supplies. Equipment and supplies shall be appropriate for the types of nuclear medicine services offered and shall be maintained for safe and efficient performance. The equipment shall be inspected, tested, and calibrated at least annually by qualified personnel.

(5) Records. The hospital shall maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures.

(A) The physician approved by the medical staff to interpret diagnostic procedures shall sign and date the interpretations of these tests.

(B) The hospital shall maintain records of the receipt and disposition of radiopharmaceuticals until disposal is authorized by the department’s Radiation Safety Licensing Branch in accordance with §289.256 of this title.

(C) Nuclear medicine services shall be ordered only by an individual whose scope of state licensure and whose defined staff privileges allow such referrals.

(o) Nursing services. The hospital shall have an organized nursing service that provides 24-hour nursing services as needed.

(1) Organization. The hospital shall have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care.

(A) Nursing services shall be under the administrative authority of a chief nursing officer (CNO) who shall be an RN and comply with one of the following:

(i) possess a master's degree in nursing;

(ii) possess a master's degree in health care administration or business administration;

(iii) possess a master's degree in a health-related field obtained through a curriculum that included courses in administration and management; or

(iv) be progressing under a written plan to obtain the nursing administration qualifications associated with a master's degree in nursing. The plan shall:

(I) describe efforts to obtain the knowledge associated with graduate education and to increase administrative and management skills and experience;

(II) include courses related to leadership, administration, management, performance improvement and theoretical approaches to delivering nursing care; and

(III) provide a time-line for accomplishing skills.

(B) The CNO in hospitals with 100 or fewer licensed beds and located in counties with a population of less than 50,000, or in hospitals that have been certified by the Centers for Medicare and Medicaid Services as critical access hospitals in accordance with the Code of Federal Regulations, Title 42, Volume 3, Part 485, Subpart F, §485.606(b), shall be exempted from the requirements specified in subparagraph (A)(i) - (iv) of this paragraph.

(C) The CNO shall be responsible for the operation of the services, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(D) The CNO shall report directly to the individual who has authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital’s governing board.

(E) The CNO shall participate with leadership from the governing body, medical staff, and clinical areas, in planning, promoting and conducting performance improvement activities.

(2) Staffing and delivery of care.

(A) The nursing services shall adopt, implement and enforce a procedure to verify that hospital nursing personnel for whom licensure is required have valid and current licensure.

(B) There shall be adequate numbers of RNs, licensed vocational nurses (LVNs), and other personnel to provide nursing care to all patients as needed.

(C) There shall be supervisory and staff personnel for each department or nursing unit to provide, when needed, the immediate availability of an RN to provide care for any patient.

(D) An RN shall be on duty in each building of a licensed hospital that contains at least one nursing unit where patients are present. The RN shall supervise and evaluate the nursing care for each patient and assign the nursing care to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(E) The nursing staff shall develop and keep current a nursing plan of care for each patient which addresses the patient's needs.

(F) The hospital shall establish a nursing committee as a standing committee of the hospital. The committee shall be established in accordance with Health and Safety Code (HSC), §§161.031 - 161.033, to be responsible for soliciting and receiving input from nurses on the development, ongoing monitoring, and evaluation of the staffing plan. As provided by HSC, §161.032, the hospital's records and review relating to evaluation of these outcomes
and indicators are confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release. As used in this subsection, "committee" or "staffing committee" means a nurse staffing committee established under this subparagraph.

(p) Outpatient services. If the hospital provides outpatient services, the services shall meet the needs of the patients in accordance with acceptable standards of practice.

1. Organization. Outpatient services shall be appropriately organized and integrated with inpatient services.

2. Personnel.

A. The hospital shall assign an individual to be responsible for outpatient services.

B. The hospital shall have appropriate physicians on staff and other professional and nonprofessional personnel available.

(q) Pharmacy services. The hospital shall provide pharmaceutical services that meet the needs of the patients.

1. Compliance. The hospital shall provide a pharmacy which is licensed, as required, by the Texas State Board of Pharmacy. Pharmacy services shall comply with all applicable statutes and rules.

2. Organization. The hospital shall have a pharmacy directed by a licensed pharmacist.

3. Medical staff. The medical staff shall be responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the hospital's organized pharmaceutical services.

4. Pharmacy management and administration. The pharmacy or drug storage area shall be administered in accordance with accepted professional principles.

A. Standards of practice as defined by state law shall be followed regarding the provision of pharmacy services.

B. The pharmaceutical services shall have an adequate number of personnel to ensure quality pharmaceutical services including emergency services.

   i. The staff shall be sufficient in number and training to respond to the pharmaceutical needs of the patient population being served. There shall be an arrangement for emergency services.

   ii. Employees shall provide pharmaceutical services within the scope of their license and education.

C. Drugs and biologicals shall be properly stored to ensure ventilation, light, security, and temperature controls.

D. Records shall have sufficient detail to follow the flow of drugs from entry through dispensation.

E. There shall be adequate controls over all drugs and medications including the floor stock. Drug storage areas shall be approved by the pharmacist, and floor stock lists shall be established.

F. Inspections of drug storage areas shall be conducted throughout the hospital under pharmacist supervision.

G. There shall be a drug recall procedure.

H. A full-time, part-time, or consulting pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

(i) Direction of pharmaceutical services may not require on-premises supervision but may be accomplished through regularly scheduled visits in accordance with state law.

(ii) A job description or other written agreement shall clearly define the responsibilities of the pharmacist.

(I) Current and accurate records shall be kept of the receipt and disposition of all scheduled drugs.

(ii) There shall be a record system in place that provides the information on controlled substances in a readily retrievable manner which is separate from the patient record.

(iii) Records shall trace the movement of scheduled drugs throughout the services, documenting utilization or wastage.

(iii) The pharmacist shall be responsible for determining that all drug records are in order and that an account of all scheduled drugs is maintained and reconciled with written orders.

(5) Delivery of services. In order to provide patient safety, drugs and biologicals shall be controlled and distributed in accordance with applicable standards of practice, consistent with federal and state laws.

A. All compounding, packaging, and dispensing of drugs and biologicals shall be under the supervision of a pharmacist and performed consistent with federal and state laws.

B. All drugs and biologicals shall be kept in a secure area, and locked when appropriate.

(i) A policy shall be adopted, implemented, and enforced to ensure the safeguarding, transferring, and availability of keys to the locked storage area.

(ii) Drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 shall be kept locked within a secure area.

(C) Outdated, mislabeled, or otherwise unusable drugs and biologicals shall not be available for patient use.

(D) When a pharmacist is not available, drugs and biologicals shall be removed from the pharmacy or storage area only by personnel designated in the policies of the medical staff and pharmaceutical service, in accordance with federal and state laws.

(i) There shall be a current list of individuals identified by name and qualifications who are designated to remove drugs from the pharmacy.

(ii) Only amounts sufficient for immediate therapeutic needs shall be removed.

(E) Drugs and biologicals not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the medical staff.

(i) Stop order policies and procedures shall be consistent with those of the nursing staff and the medical staff rules and regulations.

(ii) A protocol shall be established by the medical staff for the implementation of the stop order policy, in order that drugs shall be reviewed and renewed, or automatically stopped.

(iii) A system shall be in place to determine compliance with the stop order policy.

(F) Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician and, if appropriate, to the hospital-wide quality assessment...
and performance improvement program. There shall be a mechanism in place for capturing, reviewing, and tracking medication errors and adverse drug reactions.

(G) Abuses and losses of controlled substances shall be reported, in accordance with applicable federal and state laws, to the individual responsible for the pharmaceutical services, and to the chief executive officer, as appropriate.

(H) Information relating to drug interactions and information on drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration shall be immediately available to the professional staff.

(i) A pharmacist shall be readily accessible by telephone or other means to discuss drug therapy, interactions, side effects, dosage, assist in drug selection, and assist in the identification of drug induced problems.

(ii) There shall be staff development programs on drug therapy available to facility staff to cover such topics as new drugs added to the formulary, how to resolve drug therapy problems, and other general information as the need arises.

(I) A Formulary system shall be established by the medical staff to ensure quality pharmaceuticals at reasonable costs.

(r) Quality assessment and performance improvement. The governing body shall ensure that there is an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care.

1 Program scope. The hospital-wide QAPI program shall reflect the complexity of the hospital's organization and services and have a written plan of implementation. The program must include an ongoing program that shows measurable improvements in the indicators for which there is evidence that they will improve health outcomes, and identify and reduce medical errors.

(A) All hospital departments and services, including services furnished under contract or arrangement shall be evaluated.

(B) Health care associated infections shall be evaluated.

(C) Medication therapy shall be evaluated.

(D) All medical and surgical services performed in the hospital shall be evaluated as they relate to appropriateness of diagnosis and treatment.

(E) The program must measure, analyze and track quality indicators, including adverse patients' events, and other aspects of performance that assess processes of care, hospital services and operations.

(F) Data collected must be used to monitor the effectiveness and safety of service and quality of care, and to identify opportunities for changes that will lead to improvement.

(G) Priorities must be established for performance improvement activities that focus on high-risk, high-volume, or problem-prone areas, taking into consideration the incidence, prevalence and severity of problems in those areas, and how health outcomes and quality of care may be affected.

(H) Performance improvement activities which affect patient safety, including analysis of medical errors and adverse patient events, must be established, and preventive actions implemented.

(I) Success of actions implemented as a result of performance improvement activities must be measured, and ongoing performance must be tracked to ensure improvements are sustained.

(2) Responsibility and accountability. The hospital's governing body, medical staff and administrative staff are responsible and accountable for ensuring that:

(A) an ongoing program for quality improvement is defined, implemented and maintained, and that program requirements are met;

(B) an ongoing program for patient safety, including reduction of medical errors, is defined, implemented and maintained;

(C) the hospital-wide QAPI efforts address priorities for improved quality of care and patient safety, and that all improvement actions are evaluated; and

(D) adequate resources are allocated for measuring, assessing, improving and sustaining the hospital's resources, and for reducing risk to patients.

(3) Medically-related patient care services. The hospital shall have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients. The hospital also shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from hospital. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Health and Safety Code, §533.035, to conduct prior to hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(i) to ensure that placement of the patient in a nursing facility is necessary;

(ii) to identify alternate placement options when applicable; and

(iii) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(4) Implementation. The hospital must take actions aimed at performance improvement and, after implementing those actions, the hospital must measure its success, and track performance to ensure that improvements are sustained.

(s) Radiology services. The hospital shall maintain, or have available, diagnostic radiologic services according to needs of the patients. All radiology equipment, including X-ray equipment, mammography equipment and laser equipment, shall be licensed and registered as required under Chapter 289 of this title (relating to Radiation Control). If therapeutic services are also provided, the services, as well
as the diagnostic services, shall meet professionally approved standards for safety and personnel qualifications as required in §§289.227, 289.229, 289.230 and 289.231 of this title (relating to Registration Regulations). In a special hospital, portable X-ray equipment may be acceptable as a minimum requirement.

(1) Policies and procedures. Policies and procedures shall be adopted, implemented and enforced which will describe the radiology services provided in the hospital and how employee and patient safety will be maintained.

(2) Safety for patients and personnel. The radiology services, particularly ionizing radiology procedures, shall minimize hazards to patients and personnel.

(A) Proper safety precautions shall be maintained against radiation hazards. This includes adequate radiation shielding, safety procedures and equipment maintenance and testing.

(B) Inspection of equipment shall be made by or under the supervision of a licensed medical physicist in accordance with §289.227(o) of this title (relating to Use of Radiation Machines in the Healing Arts). Defective equipment shall be promptly repaired or replaced.

(C) Radiation workers shall be provided personnel monitoring dosimeters to measure the amount of radiation exposure they receive. Exposure reports and documentation shall be available for review.

(D) Radiology services shall be provided only on the order of individuals granted privileges by the medical staff.

(3) Personnel.

(A) A qualified full-time, part-time, or consulting radiologist shall supervise the ionizing radiology services and shall interpret only those radiology tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this section a radiologist is a physician who is qualified by education and experience in radiology in accordance with medical staff bylaws.

(B) Only personnel designated as qualified by the medical staff shall use the radiology equipment and administer procedures.

(4) Records. Records of radiology services shall be maintained. The radiologist or other individuals who have been granted privileges to perform radiology services shall sign reports of his or her interpretations.

(I) Renal dialysis services.

(1) Hospitals may provide inpatient dialysis services without an additional license under HSC Chapter 251. Hospitals providing outpatient dialysis services shall be licensed under HSC Chapter 251.

(2) Hospitals may provide outpatient dialysis services when the governor or the president of the United States declares a disaster in this state or another state. The hospital may provide outpatient dialysis only during the term of the disaster declaration.

(3) Equipment.

(A) Maintenance and repair. All equipment used by a facility, including backup equipment, shall be operated within manufacturer's specifications, and maintained free of defects which could be a potential hazard to patients, staff, or visitors. Maintenance and repair of all equipment shall be performed by qualified staff or contract personnel.

(i) Staff shall be able to identify malfunctioning equipment and report such equipment to the appropriate staff for immediate repair.

(ii) Medical equipment that malfunctions must be clearly labeled and immediately removed from service until the malfunction is identified and corrected.

(iii) Written evidence of all maintenance and repairs shall be maintained.

(iv) After repairs or alterations are made to any equipment or system, the equipment or system shall be thoroughly tested for proper operation before returning to service. This testing must be documented.

(v) A facility shall comply with the federal Food, Drug, and Cosmetic Act, 21 United States Code (USC), §360(b), concerning reporting when a medical device as defined in 21 USC §321(h) has or may have caused or contributed to the injury or death of a patient of the facility.

(B) Preventive maintenance. A facility shall develop, implement and enforce a written preventive maintenance program to ensure patient care related equipment used in a facility receives electrical safety inspections, if appropriate, and maintenance at least annually or more frequently as recommended by the manufacturer. The preventive maintenance may be provided by facility staff or by contract.

(C) Backup machine. At least one complete dialysis machine shall be available on site as backup for every ten dialysis machines in use. At least one of these backup machines must be completely operational during hours of treatment. Machines not in use during a patient shift may be counted as backup except at the time of an initial or an expansion survey.

(D) Pediatric patients. If pediatric patients are treated, a facility shall use equipment and supplies, to include blood pressure cuffs, dialyzers, and blood tubing, appropriate for this special population.

(E) Emergency equipment and supplies. A facility shall have emergency equipment and supplies immediately accessible in the treatment area.

(i) At a minimum, the emergency equipment and supplies shall include the following:

(I) oxygen;

(II) mechanical ventilatory assistance equipment, to include airways, manual breathing bag, and mask;

(III) suction equipment;

(IV) supplies specified by the medical director;

(V) electrocardiograph; and

(VI) automated external defibrillator or defibril-

(ii) If pediatric patients are treated, the facility shall have the appropriate type and size emergency equipment and supplies listed in clause (i) of this subparagraph for this special population.

(iii) A facility shall establish, implement, and enforce a policy for the periodic testing and maintenance of the emergency equipment. Staff shall properly maintain and test the emergency equipment and supplies and document the testing and maintenance.
(F) Transducer protector. A transducer protector shall be replaced when wetted during a dialysis treatment and shall be used for one treatment only.

(4) Water treatment and dialysate concentrates.

(A) Compliance required. A facility shall meet the requirements of this section. A facility may follow more stringent requirements than the minimum standards required by this section.

(i) The facility administrator and medical director shall each demonstrate responsibility for the water treatment and dialysate supply systems to protect hemodialysis patients from adverse effects arising from known chemical and microbial contaminants that may be found in improperly prepared dialysate, to ensure that the dialysate is correctly formulated and meets the requirements of all applicable quality standards.

(ii) The facility administrator and medical director must assure that policies and procedures related to water treatment and dialysate are understandable and accessible to the operator(s) and that the training program includes quality testing, risks and hazards of improperly prepared concentrate and bacterial issues.

(iii) The facility administrator and medical director must be informed prior to any alteration of, or any device being added to, the water system.

(B) Water treatment. These requirements apply to water intended for use in the delivery of hemodialysis, including the preparation of concentrates from powder at a dialysis facility and dialysate.

(i) The design for the water treatment system in a facility shall be based on considerations of the source water for the facility and designed by a water quality professional with education, training, or experience in dialysis system design.

(ii) When a public water system supply is not used by a facility, the source water shall be tested by the facility at monthly intervals in the same manner as a public water system as described in 30 TAC §290.104 (relating to Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels), and §290.109 (relating to Microbial Contaminants) as adopted by the Texas Commission on Environmental Quality (TCEQ).

(iii) The physical space in which the water treatment system is located must be adequate to allow for maintenance, testing, and repair of equipment. If mixing of dialysate is performed in the same area, the physical space must also be adequate to house and allow for the maintenance, testing, and repair of the mixing equipment and for performing the mixing procedure.

(iv) The water treatment system components shall be arranged and maintained so that bacterial and chemical contaminant levels in the product water do not exceed the standards for hemodialysis water quality described in §4.2.1 (concerning Water Bacteriology) and §4.2.2 (concerning Maximum Level of Chemical Contaminants) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition, published by the Association for the Advancement of Medical Instrumentation (AAMI). All documents published by the AAMI as referenced in this section may be obtained by writing the following address: 1110 North Glebe Road, Suite 220, Arlington, Virginia 22201.

(v) Written policies and procedures for the operation of the water treatment system must be developed and implemented. Parameters for the operation of each component of the water treatment system must be developed in writing and known to the operator. Each major water system component shall be labeled in a manner that identifies the device; describes its function, how performance is verified and actions to take in the event performance is not within an acceptable range.

(vi) The materials of any components of water treatment systems (including piping, storage, filters and distribution systems) that contact the purified water shall not interact chemically or physically so as to affect the purity or quality of the product water adversely. Such components shall be fabricated from unreactive materials (e.g. plastics) or appropriate stainless steel. The use of materials that are known to cause toxicity in hemodialysis, such as copper, brass, galvanized material, or aluminum, is prohibited.

(vii) Chemicals infused into the water such as iodine, acid, flocculants, and complexing agents shall be shown to be nondialyzable or shall be adequately removed from product water. Monitors or specific test procedures to verify removal of additives shall be provided and documented.

(viii) Each water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of two carbon tanks in series. If the source water is from a private supply which does not use chlorine/chloramines, the water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of one carbon tank.

(I) Reverse osmosis membranes. Reverse osmosis membranes, if used, shall meet the standards in §4.3.7 (concerning Reverse Osmosis) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition, published by the AAMI.

(II) Deionization systems.

(a) Deionization systems, if used, shall be monitored continuously to produce water of one megohm-centimeter (cm) or greater specific resistivity (or conductivity of one microsiemen/cm or less) at 25 degrees Celsius. An audible and visual alarm shall be activated when the product water resistivity falls below this level and the product water stream shall be prevented from reaching any point of use.

(b) Patients shall not be dialyzed on deionized water with a resistivity less than 1.0 megohm-cm measured at the output of the deionizer.

(c) A minimum of two deionization (DI) tanks in series shall be used with resistivity monitors including audible and visual alarms placed pre and post the final DI tank in the system. The alarms must be audible in the patient care area.

(d) Feed water for deionization systems shall be pretreated with activated carbon adsorption, or a comparable alternative, to prevent nitrosamine formation.

(e) If a deionization system is the last process in a water treatment system, it shall be followed by an ultrafilter or other bacteria and endotoxin reducing device.

(III) Carbon tanks.

(a) The carbon tanks must contain acid washed carbon, 30-mesh or smaller with a minimum iodine number of 900.

(b) A minimum of two carbon adsorption beds shall be installed in a series configuration.

(c) The total empty bed contact time (EBCT) shall be at least ten minutes, with the final tank providing at least five minutes EBCT. Carbon adsorption systems used to prepare water for portable dialysis systems are exempt from the requirement for the second carbon and a ten minute EBCT if removal of chloramines to below 0.1 milligram (mg)/1 is verified before each treatment.

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(-d-) A means shall be provided to sample the product water immediately prior to the final bed(s). Water from this port(s) must be tested for chlorine/chloramine levels immediately prior to each patient shift.

(-e-) All samples for chlorine/chloramine testing must be drawn when the water treatment system has been operating for at least 15 minutes.

(-f-) Tests for total chlorine, which include both free and combined forms of chlorine, may be used as a single analysis with the maximum allowable concentration of 0.1 mg/liter (L). Test results of greater than 0.5 parts per million (ppm) for chlorine or 0.1 ppm for chloramine from the port between the initial tank(s) and final tank(s) shall require testing to be performed at the final exit and replacement of the initial tank(s).

(-g-) In a system without a holding tank, if test results at the exit of the final tank(s) are greater than the parameters for chlorine or chloramine described in this subclause, dialysis treatment shall be immediately terminated to protect patients from exposure to chlorine/chloramine and the medical director shall be notified. In systems with holding tanks, if the holding tank tests <1 mg/L for total chlorine, the reverse osmosis (RO) may be turned off and the product water in the holding tank may be used to finish treatments in process. The medical director shall be notified.

(-h-) If means other than granulated carbon are used to remove chlorine/chloramine, the facility's governing body must approve such use in writing after review of the safety of the intended method for use in hemodialysis applications. If such methods include the use of additives, there must be evidence the product water does not contain unsafe levels of these additives.

(-i-) Water softeners, if used, shall be tested at the end of the treatment day to verify their capacity to treat a sufficient volume of water to supply the facility for the entire treatment day and shall be fitted with a mechanism to prevent water containing the high concentrations of sodium chloride used during regeneration from entering the product water line during regeneration.

(-j-) If used, the face(s) of timer(s) used to control any component of the water treatment or dialysate delivery system shall be visible to the operator at all times. Written evidence that timers are checked for operation and accuracy each day of operation must be maintained.

(-k-) Filter housings, if used during disinfectant procedures, shall include a means to clear the lower portion of the housing of the disinfecting agents. Filter housings shall be opaque.

(-l-) Ultrafilters, or other bacterial reducing filters, if used, shall be fitted with pressure gauges on the inlet and outlet water lines to monitor the pressure drop across the membrane. Ultrafilters shall be included in routine disinfection procedures.

(-m-) If used, storage tanks shall have a conical or bowl shaped base and shall drain from the lowest point of the base. Storage tanks shall have a tight-fitting lid and be vented through a hydrophobic 0.2 micron air filter. Means shall be provided to effectively disinfect any storage tank installed in a water distribution system.

(-n-) Ultraviolet (UV) lights, if used, shall be monitored at the frequency recommended by the manufacturer. A log sheet shall be used to record monitoring.

(-o-) Water treatment system piping shall be labeled to indicate the contents of the pipe and direction of flow.

(-p-) The water treatment system must be continuously monitored during patient treatment and be guarded by audible and visual alarms which can be seen and heard in the dialysis treatment area should water quality drop below specific parameters. Quality monitor sensing cells shall be located as the last component of the water treatment system and at the beginning of the distribution system. No water treatment components that could affect the quality of the product water as measured by this device shall be located after the sensing cell.

(xvii) When deionization tanks do not follow a reverse osmosis system, parameters for the rejection rate of the membranes must assure that the lowest rate accepted would provide product water in compliance with §4.2.2 (concerning Maximum Level of Chemical Contaminants) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition published by the AAMI.

(xviii) A facility shall maintain written logs of the operation of the water treatment system for each treatment day. The log book shall include each component's operating parameter and the action taken when a component is not within the facility's set parameters.

(xix) Microbiological testing of product water shall be conducted.

(I) Frequency. Microbiological testing shall be conducted monthly and following any repair or change to the water treatment system. For a newly installed water distribution system, or when a change has been made to an existing system, weekly testing shall be conducted for one month to verify that bacteria and endotoxin levels are consistently within the allowed limits.

(II) Sample sites. At a minimum, sample sites chosen for the testing shall include the beginning of the distribution piping, at any site of dialysate mixing, and the end of the distribution piping.

(III) Technique. Samples shall be collected immediately before sanitization/disinfection of the water treatment system and dialysis machines. Water testing results shall be routinely trended and reviewed by the medical director in order to determine if results seem questionable or if there is an opportunity for improvement. The medical director shall determine if there is a need for retesting. Repeated results of "no growth" shall be validated via an outside laboratory. A calibrated loop may not be used in microbiological testing of water samples. Colonies shall be counted using a magnifying device.

(IV) Expected results. Product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use, shall contain a total viable microbial count less than 200 colony forming units (CFU)/millimeter (ml) and an endotoxin concentration less than 2 endotoxin units (EU)/ml. The action level for the total viable microbial count in the product water shall be 50 CFU/ml and the action level for the endotoxin concentration shall be 1 EU/ml.

(V) Required action for unacceptable results. If the action levels described at subclause (IV) of this clause are observed in the product water, corrective measures shall be taken promptly to reduce the levels into an acceptable range.

(VI) Records. All bacteria and endotoxin results shall be recorded on a log sheet in order to identify trends that may indicate the need for corrective action.

(xx) If ozone generators are used to disinfect any portion of the water or dialysate delivery system, testing based on the manufacturer's direction shall be used to measure the ozone concentration each time disinfection is performed, to include testing for safe levels of residual ozone at the end of the disinfection cycle. Testing for ozone in the ambient air shall be conducted on a periodic basis as rec-
ommended by the manufacturer. Records of all testing must be main-
tained in a log.

(xxi) If used, hot water disinfection systems shall be monitored for temperature and time of exposure to hot water as speci-
fied by the manufacturer. Temperature of the water shall be recorded at a point furthest from the water heater, where the lowest water temper-
atur e is likely to occur. The water temperature shall be measured each
time a disinfection cycle is performed. A record that verifies successful
completion of the heat disinfection shall be maintained.

(xxii) After chemical disinfection, means shall be provided to restore the equipment and the system in which it is
installed to a safe condition relative to residual disinfectant prior to the product water being used for dialysis applications.

(xxiii) Samples of product water must be submitted for chemical analysis every six months and must demonstrate that the
quality of the product water used to prepare dialysate or concentrates from powder, meets §4.2.2 (concerning Maximum Level of Chemical
Contaminants) of the American National Standard, Water Treatment
Equipment for Hemodialysis Applications, August 2001 Edition, pub-
lished by the AAMI.

(I) Samples for chemical analysis shall be col-
lected at the end of the water treatment components and at the most
distal point in each water distribution loop, if applicable. All other
outlets from the distribution loops shall be inspected to ensure that the
outlets are fabricated from compatible materials. Appropriate contain-
ers and pH adjustments shall be used to ensure accurate determinations.
New facilities or facilities that add or change the configuration of the
water distribution system must draw samples at the most distal point
for each water distribution loop, if applicable, on a one time basis.

(II) Additional chemical analysis shall be sub-
mitted if substantial changes are made to the water treatment system
or if the percent rejection of a reverse osmosis system decreased 5.0%
or more from the percent rejection measured at the time the water sam-
ple for the preceding chemical analysis was taken.

(xxiv) Facility records must include all test results and
evidence that the medical director has reviewed the results of the
water quality testing and directed corrective action when indicated.

(xxv) Only persons qualified by the education or ex-
perience may operate, repair, or replace components of the water treat-
ment system.

(C) Dialysate.

(i) Quality control procedures shall be established
to ensure ongoing conformance to policies and procedures regarding
dialysate quality.

(ii) Each facility shall set all hemodialysis machines
to use only one family of concentrates. When new machines are put
into service or the concentrate family or concentrate manufacturer is
changed, samples shall be sent to a laboratory for verification.

(iii) Prior to each patient treatment, staff shall verify
the dialysate conductivity and pH of each machine with an independent
device.

(iv) Bacteriological testing shall be conducted.

(I) Frequency. Responsible facility staff shall de-
velop a schedule to ensure each hemodialysis machine is tested quar-
terly for bacterial growth and the presence of endotoxins. Hemodial-
ysis machines of home patients shall be cultured monthly until results
not exceeding 200 CFU/ml are obtained for three consecutive months,
then quarterly samples shall be cultured.

(II) Acceptable limits. Dialysate shall contain
less than 200 CFU/ml and an endotoxin concentration of less than 2
EU/ml. The action level for total viable microbial count shall be 50
CFU/ml and the action level for endotoxin concentration shall be 1
EU/ml.

(III) Action to be taken. Disinfection and retesting
shall be done when bacterial or endotoxin counts exceed the action
levels. Additional samples shall be collected when there is a clinical
indication of a pyrogenic reaction and/or septicemia.

(v) Only a licensed nurse may use an additive to in-
duce concentrations of specific electrolytes in the acid concentrate.
Mixing procedures shall be followed as specified by the additive man-
ufacturer. When additives are prescribed for a specific patient, the con-
tainer holding the prescribed acid concentrate shall be labeled with the
name of the patient, the final concentration of the added electrolyte, the
date the prescribed concentrate was made, and the name of the person
who mixed the additive.

(vi) All components used in concentrate preparation
systems (including mixing and storage tanks, pumps, valves and pip-
ing) shall be fabricated from materials (e.g., plastics or appropriate
stainless steel) that do not interact chemically or physically with the
concentrate so as to affect its purity, or with the germicides used to
disinfect the equipment. The use of materials that are known to cause
toxicity in hemodialysis such as copper, brass, galvanized material and
aluminum is prohibited.

(vii) Facility policies shall address means to protect
stored acid concentrates from tampering or from degeneration due to
exposure to extreme heat or cold.

(viii) Procedures to control the transfer of acid con-
centrates from the delivery container to the storage tank and prevent the
inadvertent mixing of different concentrate formulations shall be de-
veloped, implemented and enforced. The storage tanks shall be clearly
labeled.

(ix) Concentrate mixing systems shall include a pu-
rified water source, a suitable drain, and a ground fault protected elec-
trical outlet.

(I) Operators of mixing systems shall use per-
sonal protective equipment as specified by the manufacturer during all
mixing processes.

(II) The manufacturer's instructions for use of a
concentrate mixing system shall be followed, including instructions for
mixing the powder with the correct amount of water. The number of
bags or weight of powder added shall be determined and recorded.

(III) The mixing tank shall be clearly labeled to
indicate the fill and final volumes required to correctly dilute the pow-
der.

(IV) Systems for preparing either bicarbonate or
acid concentrate from powder shall be monitored according to the man-
ufacturer's instructions.

(V) Concentrates shall not be used, or transferred
to holding tanks or distribution systems, until all tests are completed.

(VI) If a facility designs its own system for mix-
 ing concentrates, procedures shall be developed and validated using an
independent laboratory to ensure proper mixing.

(x) Acid concentrate mixing tanks shall be designed
to allow the inside of the tank to be rinsed when changing concentrate
formulas.
(I) Acid mixing systems shall be designed and maintained to prevent rust and corrosion.

(II) Acid concentrate mixing tanks shall be emptied completely and rinsed with product water before mixing another batch of concentrate to prevent cross contamination between different batches.

(III) Acid concentrate mixing equipment shall be disinfected as specified by the equipment manufacturer or in the case where no specifications are given, as defined by facility policy.

(IV) Records of disinfection and rinsing of disinfectants to safe residual levels shall be maintained.

(x) Bicarbonate concentrate mixing tanks shall have conical or bowl shaped bottoms and shall drain from the lowest point of the base. The tank design shall allow all internal surfaces to be disinfected and rinsed.

(I) Bicarbonate concentrate mixing tanks shall not be prefilled the night before use.

(II) If disinfectant remains in the mixing tank overnight, this solution must be completely drained, the tank rinsed and tested for residual disinfectant prior to preparing the first batch of that day of bicarbonate concentrate.

(III) Unused portions of bicarbonate concentrate shall not be mixed with fresh concentrate.

(IV) At a minimum, bicarbonate distribution systems shall be disinfected weekly. More frequent disinfection shall be done if required by the manufacturer, or if dialysate culture results are above the action level.

(V) If jugs are reused to deliver bicarbonate concentrate to individual hemodialysis machines:

(a) jugs shall be emptied of concentrate, rinsed and inverted to drain at the end of each treatment day;

(b) at a minimum, jugs shall be disinfected weekly, more frequent disinfection shall be considered by the medical director if dialysate culture results are above the action level; and

(c) following disinfection, jugs shall be drained, rinsed free of residual disinfectant, and inverted to dry. Testing for residual disinfectant shall be done and documented.

(xii) All mixing tanks, bulk storage tanks, dispensing tanks and containers for single hemodialysis treatments shall be labeled as to the contents.

(I) Mixing tanks. Prior to batch preparation, a label shall be affixed to the mixing tank that includes the date of preparation and the chemical composition or formulation of the concentrate being prepared. This labeling shall remain on the mixing tank until the tank has been emptied.

(II) Bulk storage/dispensing tanks. These tanks shall be permanently labeled to identify the chemical composition or formulation of their contents.

(III) Single machine containers. At a minimum, single machine containers shall be labeled with sufficient information to differentiate the contents from other concentrate formulations used in the facility and permit positive identification by users of container contents.

(xiii) Permanent records of batches produced shall be maintained to include the concentrate formula produced, the volume of the batch, lot number(s) of powdered concentrate packages, the manufacturer of the powdered concentrate, date and time of mixing, test results, person performing mixing, and expiration date (if applicable).

(xiv) If dialysate concentrates are prepared in the facility, the manufacturers' recommendations shall be followed regarding any preventive maintenance. Records shall be maintained indicating the date, time, person performing the procedure, and the results (if applicable).

(5) Prevention requirements concerning patients.

(A) Hepatitis B vaccination.

(i) With the advice and consent of a patient's attending nephrologist, facility staff shall make the hepatitis B vaccine available to a patient who is susceptible to hepatitis B, provided that the patient has coverage or is willing to pay for vaccination.

(ii) The facility shall make available to patients literature describing the risks and benefits of the hepatitis B vaccination.

(B) Serologic screening of patients.

(i) A patient new to dialysis shall have been screened for hepatitis B surface antigen (HBsAg) within one month before or at the time of admission to the facility or have a known hepatitis B surface antibody (anti-HBs) status of at least 10 milli-international units per milliliter no more than 12 months prior to admission. The facility shall document how this screening requirement is met.

(ii) Repeated serologic screening shall be based on the antigen or antibody status of the patient.

(I) Monthly screening for HBsAg is required for patients whose previous test results are negative for HBsAg.

(II) Screening of HBsAg-positive or anti-HBs-positive patients may be performed on a less frequent basis, provided that the facility's policy on this subject remains congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Disease in the United States, 2000, published by the United States Department of Health and Human Services.

(C) Isolation procedures for the HBsAg-positive patient.

(i) The facility shall treat patients positive for HBsAg in a segregated treatment area which includes a hand washing sink, a work area, patient care supplies and equipment, and sufficient space to prevent cross-contamination to other patients.

(ii) A patient who tests positive for HBsAg shall be isolated on equipment reserved and maintained for the HBsAg-positive patient's use only.

(iii) When a caregiver is assigned to both HBsAg-negative and HBsAg-positive patients, the HBsAg-negative patients assigned to this grouping must be Hepatitis B antibody positive. Hepatitis B antibody positive patients are to be seated at the treatment stations nearest the isolation station and be assigned to the same staff member who is caring for the HBsAg-positive patient.

(iv) If an HBsAg-positive patient is discharged, the equipment which had been reserved for that patient shall be given intermediate level disinfection prior to use for a patient testing negative for HBsAg.

(v) In the case of patients new to dialysis, if these patients are admitted for treatment before results of HBsAg or anti-HBs testing are known, these patients shall undergo treatment as if the HBsAg test results were potentially positive, except that they shall not be treated in the HBsAg isolation room, area, or machine.
(I) The facility shall treat potentially HBsAg-positive patients in a location in the treatment area which is outside of traffic patterns until the HBsAg test results are known.

(II) The dialysis machine used by this patient shall be given intermediate level disinfection prior to its use by another patient.

(III) The facility shall obtain HBsAg status results of the patient no later than three days from admission.

(u) Respiratory care services. The hospital shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) Policies and procedures shall be adopted, implemented, and enforced which describe the provision of respiratory care services in the hospital.

(2) The organization of the respiratory care services shall be appropriate to the scope and complexity of the services offered.

(3) There shall be a medical director or clinical director of respiratory care services who is a physician with the knowledge, experience, and capabilities to supervise and administer the services properly. The medical director or clinical director may serve on either a full-time or part-time basis.

(4) There shall be adequate numbers of respiratory therapists, respiratory therapy technicians, and other personnel who meet the qualifications specified by the medical staff, consistent with the state law.

(5) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(6) If blood gases or other clinical laboratory tests are performed by the respiratory care services staff, the respiratory care staff shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR, Part 493.

(7) Services shall be provided only on, and in accordance with, the orders of a physician.

(v) Sterilization and sterile supplies.

(1) Supervision. The sterilization of all supplies and equipment shall be under the supervision of a person qualified by education, training and experience. Staff responsible for the sterilization of supplies and equipment shall participate in a documented continuing education program; new employees shall receive initial orientation and on-the-job training.

(2) Equipment and procedures.

(A) Sterilization. Every hospital shall provide equipment adequate for sterilization of supplies and equipment as needed. Equipment shall be maintained and operated to perform, with accuracy, the sterilization of the various materials required.

(B) Written policy. Written policies and procedures for the decontamination and sterilization activities performed shall be adopted, implemented and enforced. Policies shall include the receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of reusable items, as well as those for the assembly, wrapping, storage, distribution and quality control of sterile items and equipment. These written policies shall be reviewed at least every other year and approved by the infection control practitioner or committee.

(C) Separation. Where cleaning, preparation, and sterilization functions are performed in the same room or unit, the physical facilities, equipment, and the policies and procedures for their use, shall be such as to effectively separate soiled or contaminated supplies and equipment from the clean or sterilized supplies and equipment. Hand washing facilities shall be provided and a separate sink shall be provided for safe disposal of liquid waste.

(D) Labeling. All containers for solutions, drugs, flammable solvents, ether, alcohol, and medicated supplies shall be clearly labeled to indicate contents. Those which are sterilized by the hospital shall be labeled so as to be identifiable both before and after sterilization. Sterilized items shall have a load control identification that indicates the sterilizer used, the cycle or load number, and the date of sterilization.

(E) Preparation for sterilization.

(i) All items to be sterilized shall be prepared to reduce the bioburden. All items shall be thoroughly cleaned, decontaminated and prepared in a clean, controlled environment.

(ii) All articles to be sterilized shall be arranged so all surfaces will be directly exposed to the sterilizing agent for the prescribed time and temperature.

(F) Packaging. All wrapped articles to be sterilized shall be packaged in materials recommended for the specific type of sterilizer and material to be sterilized.

(G) External chemical indicators.

(i) External chemical indicators, also known as sterilization process indicators, shall be used on each package to be sterilized, including items being flash sterilized to indicate that items have been exposed to the sterilization process.

(ii) The indicator results shall be interpreted according to manufacturer's written instructions and indicator reaction specifications.

(iii) A log shall be maintained with the load identification, indicator results, and identification of the contents of the load.

(H) Biological indicators. Biological indicators are commercially-available microorganisms (e.g., United States Food and Drug Administration (FDA) approved strips or vials of Bacillus species endospores) which can be used to verify the performance of waste treatment equipment and processes (or sterilization equipment and processes).

(i) The efficacy of the sterilizing process shall be monitored with reliable biological indicators appropriate for the type of sterilizer used.

(ii) Biological indicators shall be included in at least one run each week of use for steam sterilizers, at least one run each day of use for low-temperature hydrogen peroxide gas sterilizers, and every load for ethylene oxide (EO) sterilizers.

(iii) Biological indicators shall be included in every load that contains implantable objects.

(iv) A log shall be maintained with the load identification, biological indicator results, and identification of the contents of the load.

(v) If a test is positive, the sterilizer shall immediately be taken out of service.

(l) Implantable items shall be recalled and reprocessed if a biological indicator test (spore test) is positive.
(II) All available items shall be recalled and reprocessed if a sterilizer malfunction is found and a list of those items not retrieved in the recall shall be submitted to infection control.

(III) A malfunctioning sterilizer shall not be put back into use until it has been serviced and successfully tested according to the manufacturer's recommendations.

(I) Sterilizers.

(i) Steam sterilizers (saturated steam under pressure) shall be utilized for sterilization of heat and moisture stable items. Steam sterilizers shall be used according to manufacturer's written instructions.

(ii) EO sterilizers shall be used for processing heat and moisture sensitive items. EO sterilizers and aerators shall be used and vented according to the manufacturer's written instructions.

(iii) Flash sterilizers shall be used for emergency sterilization of clean, unwrapped instruments and porous items only.

(J) Disinfection.

(i) Written policies, approved by the infection control committee, shall be adopted, implemented and enforced for the use of chemical disinfectants.

(ii) The manufacturer's written instructions for the use of disinfectants shall be followed.

(iii) An expiration date, determined according to manufacturer's written recommendations, shall be marked on the container of disinfection solution currently in use.

(iv) Disinfectant solutions shall be kept covered and used in well-ventilated areas.

(v) Chemical germicides that are registered with the United States Environmental Protection Agency as "sterilants" may be used either for sterilization or high-level disinfection.

(vi) All staff personnel using chemical disinfectants shall have received training on their use.

(K) Performance records.

(i) Performance records for all sterilizers shall be maintained for each cycle. These records shall be retained and available for review for a minimum of five years.

(ii) Each sterilizer shall be monitored continuously during operation for pressure, temperature, and time at desired temperature and pressure. A record shall be maintained and shall include:

(I) the sterilizer identification;

(II) sterilization date;

(III) cycle number;

(IV) contents of each load;

(V) duration and temperature of exposure phase (if not provided on sterilizer recording charts);

(VI) identification of operator(s);

(VII) results of biological tests and dates performed;

(VIII) time-temperature recording charts from each sterilizer;

(IX) gas concentration and relative humidity (if applicable); and

(X) any other test results.

(L) Storage of sterilized items.

(i) Sterilized items shall be transported so as to maintain cleanliness and sterility and to prevent physical damage.

(ii) Sterilized items shall be stored in well-ventilated, limited access areas with controlled temperature and humidity.

(iii) The hospital shall adopt, implement and enforce a policy which describes the mechanism used to determine the shelf life of sterilized packages.

(M) Preventive maintenance. Preventive maintenance of all sterilizers shall be performed according to individual adopted, implemented and enforced policy on a scheduled basis by qualified personnel, using the sterilizer manufacturer's service manual as a reference. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least two years and shall be available for review.

(w) Surgical services. If a hospital provides surgical services, the services shall be well-organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services shall be consistent in quality with inpatient care in accordance with the complexity of services offered. A special hospital may not offer surgical services.

(1) Organization and staffing. The organization of the surgical services shall be appropriate for the scope of the services offered.

(A) The operating rooms shall be supervised by an experienced RN or physician.

(B) Licensed vocational nurses (LVNs) and surgical technologists (operating room technicians) may serve as scrub nurses or technologists under the supervision of an RN.

(C) Circulating duties in the operating room must be performed by qualified RNs. In accordance with approved medical staff policies and procedures, LVNs and surgical technologists may assist in circulatory duties under the direct supervision of a qualified RN circulator.

(D) Surgical privileges shall be delineated for all physicians, podiatrists, and dentists performing surgery in accordance with the competencies of each. The surgical services shall maintain a roster specifying the surgical privileges of each.

(E) If the facility employs surgical technologists, the facility shall adopt, implement, and enforce policies and procedures to comply with Health and Safety Code, Chapter 259 (relating to Surgical Technologists at Health Care Facilities).

(2) Delivery of service. Surgical services shall be consistent with needs and resources. Written policies governing surgical care which are designed to ensure the achievement and maintenance of high standards of medical practice and patient care shall be adopted, implemented and enforced.

(A) There shall be a complete medical history and physical examination, as required under subsection (k)(3)(F) of this section, in the medical record of every patient prior to surgery, except in emergencies. If this has been dictated, but not yet recorded in the patient's medical record, there shall be a statement to that effect and an admission note in the record by the individual who admitted the patient.

(B) A properly executed informed consent form for the operation shall be in the patient's medical record before surgery, except in emergencies.
(C) The following equipment shall be available in the operating room suites:

- communication system;
- cardiac monitor;
- resuscitator;
- defibrillator;
- aspirator; and
- tracheotomy set.

(D) There shall be adequate provisions for immediate postoperative care.

(E) The operating room register shall be complete and up-to-date. The register shall contain, but not be limited to, the following:

- patient's name and hospital identification number;
- date of operation;
- operation performed;
- operating surgeon and assistant(s);
- type of anesthesia used and name of person administering it;
- time operation began and ended;
- time anesthesia began and ended;
- disposition of specimens;
- names of scrub and circulating personnel;
- unusual occurrences; and
- disposition of the patient.

(F) An operative report describing techniques, findings, and tissue removed or altered shall be written or dictated immediately following surgery and signed by the surgeon.

(x) Therapy services. If the hospital provides physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to ensure the health and safety of patients.

1. Organization and staffing. The organization of the services shall be appropriate to the scope of the services offered.

   (A) The director of the services shall have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

   (B) Physical therapy, occupational therapy, speech therapy, or audiology services, if provided, shall be provided by staff who meet the qualifications specified by the medical staff, consistent with state law.

2. Delivery of services. Services shall be furnished in accordance with a written plan of treatment. Services to be provided shall be consistent with applicable state laws and regulations, and in accordance with orders of the physician, podiatrist, dentist or other licensed practitioner who is authorized by the medical staff to order the services. Therapy orders shall be incorporated in the patient's medical record.

   (y) Waste and waste disposal.

   (1) Special waste and liquid/sewage waste management.

   (A) The hospital shall comply with the requirements set forth by the department in §§1.131 - 1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities) and the TCEQ requirements in 30 TAC Chapter 326, Medical Waste Management, §326.17, §326.19, §326.21, and §326.23 (relating to Packaging, Labeling and Shipping Requirements) and §326.31 (relating to Exempt Medical Waste Operations).

   (B) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

   (2) Waste receptacles.

   (A) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at a central location(s) into closed containers.

   (B) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

   (C) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

   (D) Nonreusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

   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 January 13, 2020.

   TRD-202000117

   Karen Ray
   Chief Counsel
   Department of State Health Services
   Effective date: February 2, 2020
   Proposal publication date: September 13, 2019
   For further information, please call: (512) 834-4591

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   CHAPTER 135. AMBULATORY SURGICAL CENTERS

   SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

   25 TAC §135.15

   The Texas Health and Human Services Commission (HHSC) adopts an amendment to §135.15, concerning Facility Staffing and Training. The amendment is adopted without changes to the proposed text as published in the September 13, 2019 issue of the Texas Register (44 TexReg 4944), and therefore will not be republished.

   BACKGROUND AND JUSTIFICATION

   The purpose of this amendment is to update the requirements for establishing a nursing peer review committee. The amendment to §135.15 is necessary to comply with House Bill (H.B.) 3296, 85th Legislature, Regular Session, 2017, which amended the
Texas Occupations Code, Chapter 303, related to nursing peer review committees.

COMMENTS
The 31-day comment period ended on October 14, 2019. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY
The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Occupations Code, Chapter 303.

The amendment implements Texas Government Code §531.0055 and Texas Occupations Code, Chapter 303.

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

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CHAPTER 451. PEER ASSISTANCE
25 TAC §§451.101 - 451.112
The Texas Health and Human Services Commission (HHSC) adopts the repeal of Texas Administrative Code (TAC), Title 25, Part 1, Chapter 451, Peer Assistance, in its entirety, including §451.101, concerning Authority; §451.102, concerning Program Purpose; §451.103, concerning Applicability; §451.104, concerning Relationship to Licensing/Disciplinary Authority; §451.105, concerning Program Requirements; §451.106, concerning Definitions; §451.107, concerning Organization; §451.108, concerning Staffing; §451.109, concerning Program Description; §451.110, concerning Policies and Procedures; §451.111, concerning Referrals to Assessment/Treatment Resources; and §451.112, concerning Certification. The repeal was proposed in the October 18, 2019, issue of the Texas Register (44 TexReg 5998). These rules will not be republished.

BACKGROUND AND JUSTIFICATION
The purpose is to repeal 40 TAC Chapter 451, Peer Assistance, in its entirety. New rules in 26 TAC Chapter 8, Peer Assistance for Impaired Professionals, are adopted elsewhere in this issue of the Texas Register and are substantially similar to the rules being repealed.

COMMENTS
The 31-day comment period ended November 18, 2019. During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY
The repeals 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.

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

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TRD-202000043
Karen Ray
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For further information, please call: (512) 487-3419

TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 8. PEER ASSISTANCE PROGRAMS FOR IMPAIRED PROFESSIONALS
26 TAC §§8.101, 8.103, 8.105, 8.107, 8.109, 8.111, 8.113, 8.115, 8.117, 8.119, 8.121, 8.123, 8.125
The Texas Health and Human Services Commission (HHSC) adopts new Chapter 8, concerning Peer Assistance Programs for Impaired Professionals. Section 8.105 is adopted with changes to the proposed text as published in the October 18, 2019, issue of the Texas Register (44 TexReg 5999); therefore, the rule will be republished. Sections 8.101, 8.103, 8.107, 8.109, 8.111, 8.113, 8.115, 8.117, 8.119, 8.121, 8.123, and 8.125 are adopted without changes to the proposed text as published in the October 18, 2019, issue of the Texas Register (44 TexReg 5999); therefore, the rules will not be republished.

BACKGROUND AND JUSTIFICATION
The new rules move the Department of State Health Services (DSHS) rules in Texas Administrative Code (TAC) Title 25, Chapter 451 to 26 TAC Chapter 8 as part of consolidating all HHSC rules in TAC Title 26. The new rules are reorganized and updated, but do not make changes from the language currently in 25 TAC Chapter 451 that would result in new or increased requirements for a peer assistance program for impaired professionals or for any associated state licensing authority. The repeal of 25 TAC Chapter 451, Peer Assistance, appears elsewhere in this issue of the Texas Register.

COMMENTS
The 31-day comment period ended November 18, 2019. During this period, HHSC received comments from the Texas Nurses Association. A summary of the comments and HHSC's responses is below.

Comment: The commenter suggested changing §8.105(7), the definition of "mental health professional" so that it includes a person with either a master's degree or doctorate in nursing.
Response: HHSC agrees and made a revision to the rule to reflect that a mental health professional includes a "nurse, with at least a master's degree in nursing and national certification in substance use or psychiatric nursing."

Comment: The commenter suggested changing §8.105(9) to reference "nurse" rather than "licensed vocational nurse."

Response: HHSC declines to make the suggested change, as the definition is extracted directly from Texas Health and Safety Code §467.001(5).

Comment: The commenter suggested changing §8.121(c) so that a peer assistance program notifies the appropriate licensing or disciplinary authority if a professional fails to participate in the program, rather than notifying the person who reported the professional.

Response: HHSC declines to make the suggested change, as the requirement mirrors Texas Health and Safety Code §467.005(b).

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code Chapter 467, which requires HHSC to adopt minimum criteria for peer assistance programs for impaired professionals.


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

(1) Approved peer assistance program--A program designed to help an impaired professional which is:

(A) established or approved by a licensing or disciplinary authority;

(B) meets the criteria established by HHSC in this chapter; and

(C) meets any additional criteria established by the licensing or disciplinary authority.

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

(3) Impaired professional--An individual whose ability to perform professional services is impaired by a mental health or substance use condition.

(4) Impaired student--A student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by a mental health or substance use condition.

(5) Licensing or disciplinary authority--A state agency or board that licenses or has disciplinary authority over professionals.

(6) Mental health condition--A condition (excluding intellectual or developmental disability or a substance use condition) that substantially impairs an individual's:

(A) thought, perception of reality, emotional process, or judgment;

(B) behavior; or

(C) ability to participate in daily routines.

(7) Mental health professional--An individual licensed by the state as a:

(A) licensed chemical dependency counselor;

(B) licensed clinical social worker;

(C) licensed marriage and family therapist;

(D) licensed professional counselor;

(E) psychologist; or

(F) nurse, with at least a master's degree in nursing and national certification in substance use or psychiatric nursing.

(8) Peer assistance program--Identifies, assists, and monitors individuals experiencing mental health or substance use conditions that are, or are likely to be, job-impairing, so that the individuals may return to safe practice. Peer assistance programs offer support and assistance and have a rehabilitative emphasis rather than a disciplinary emphasis.

(9) Professional--An individual who may incorporate under The Texas Professional Corporation Law as described by Section 1.008(m), Business Organizations Code, or who is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(10) Professional association--A national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

(11) Staff--All persons responsible for implementing a peer assistance program, whether employed, under contract, paid, or volunteer.

(12) Student--An individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(13) Substance use condition--A recurrent use of alcohol or drugs that causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

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 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES
The Texas Parks and Wildlife Commission, in a duly noticed meeting on November 7, 2019, adopted amendments to §57.971, concerning Devices, Means, and Methods, with changes to the proposed text as published in the September 27, 2019, issue of the Texas Register (44 TexReg 5599). These rules will be republished.

The change to §57.971, paragraph 23 replaces the phrase "name, address, and customer number" with "name and address, or customer number" to reflect that a person deploying a gear tag may indicate either that person’s name and address or the person’s customer number (i.e., license number) on the gear tag.

The change to §57.973 establishes a six-day period of validity for properly executed gear tags on jug lines, minnow traps, perch traps, throwlines, and trotlines. The current rule allows these gears to be deployed for up to 10 days before the gear tags are required to be replaced. As proposed, the time period would have been four days. During deliberations, the commission decided to adopt a six-day period and assess its effectiveness. The change also corrects an inadvertent transposition of terms in subsection (f), which currently reads, in part, "...as provided by the Parks and Wildlife Commission and regulations adopted by the Parks and Wildlife Code." The statement should read "...as provided by the Parks and Wildlife Code and regulations adopted by the Parks and Wildlife Commission."

The amendments as adopted alter definitions and gear tag requirements for jug lines, minnow traps, perch traps, throwlines, and trotlines to facilitate the removal of abandoned fishing gear from public waters and to reduce the waste of fish and wildlife resources.

The amendment to §57.971 alters the definitions for jug lines, minnow traps, perch traps, throwlines, and trotlines by stipulating that each type of gear must have the required floats and tags attached in order to be valid as lawful gear. The changes are necessary in order to distinguish bona fide fishing gear from abandoned fishing gear and litter.

The amendment to §57.973, concerning Devices, Means, and Methods, reduces the period of validity for a gear tag from 10 days to six days. Under current rules, gear tags are required to be affixed to most fishing devices that are typically left unattended, such as trotlines. The department has determined that because such devices continue to kill fish and represent a danger to birds and mammals when they are abandoned, it is necessary to require a gear tag to be employed when they are used. Under Parks and Wildlife Code, §12.1105, the department is authorized to seize a device that is in or on water in violation of a regulation of the commission. By defining jug lines, minnow traps, perch traps, throwlines, and trotlines as devices that must be affixed with a valid gear tag and float in order to be lawfully used, the department will be able to seize and remove unmarked devices, thereby preventing abandoned devices from continuing to negatively impact fish and wildlife populations. Removal of such devices will also assist the department in determining actual levels of fishing effort for various devices and will have the additional benefit of reducing threats to human health and safety.

By establishing a period of validity for gear tags of six days, the department intends to encourage a proactive approach to the use of passive fishing gears. Scientific investigations conducted by the department conclusively show that the majority of mortalities as a result of "ghost fishing" (the continuing effect of unattended passive gears) occur after four days.

The department received 41 comments opposing adoption of the rules as proposed. Of the 41 comments, 40 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Nine commenters opposed adoption and stated that requiring gears to be accompanied by visible markings would just make it easier for unscrupulous persons to steal fish and gear from law-abiding anglers. The department disagrees with the comments and responds that although there are persons who make the conscious decision to violate the law, marked fishing gear is also easier to identify and observe, and makes the gear more difficult to be disturbed or possessed by malefactors. No changes were made a result of the comments.

Five commenters opposed adoption and stated that requiring anglers to record their name, address, and customer number is redundant. The department agrees and responds that the intent of the rule was to require one or the other, which has been remedied.

Three commenters opposed adoption and stated that the rules are unnecessary because people will abandon gear no matter what the rules require. The department disagrees with the comments and responds that the intent of the rules is to reduce negative impact to fisheries from abandoned gear and allow for abandoned gear to be seized as litter. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules should stay as is but the department should increase enforcement activity. The department disagrees with the comments and responds that enforcement personnel diligently enforce the law and will continue to do so and that equipping gear with floats will increase the efficiency of enforcement efforts. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that instead of regulatory actions, there should be community action, such as lake cleanups. The department disagrees with the comments and responds that although community action is certainly laudable, volunteer assistance cannot be relied upon to be applied in the numerous areas statewide where these activities occur, and volunteers are constrained by statutory authority that does not allow them to remove illegal fishing gears. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules are evidence of department bias against means and methods other than rod and reel. The department disagrees with the comments and responds that the department does not favor any particular method of legal take over any other method of legal take and that passive gear by its very nature requires a regulatory approach that is different from gears such as pole and line that are continuously tended while in use. No changes were made as a result of the comments.
information instead of having to provide a separate gear tag. The department agrees with the comment and responds that as long as the required information is somewhere on the gear, the department regards the device as being properly marked. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules will make it harder to go fishing. The department disagrees with the comment and responds that gear tag requirements will not impose any significant burden on persons who want to go fishing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules make compliance impossible for elderly persons who cannot get out as often as younger people. The department disagrees with the comment and responds that equipping gears with floats and replacing gear tags once every six days instead of once every ten days does not appear to be a significant barrier to participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that gear-tag period of validity should be 48 hours. The department disagrees with the comment and responds that the commission after deliberation determined that a six-day period, at least for an initial period, was worth implementing in order to assess effectiveness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that gear-tag period of validity should be 24 hours. The department disagrees with the comment and responds that the commission after deliberation determined that a six-day period, at least for an initial period, was worth implementing in order to assess effectiveness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should limit the number of passive devices that can be deployed on any given water body because they constitute a boating safety hazard. The department disagrees with the comment and responds that the logistical complications associated with administering and enforcing a quota system for passive gears on public water bodies would be burdensome and expensive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a float should be required for each end of a trotline. The department agrees with the comment and responds that the rules require each end of a trotline to be equipped with a float. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a float should be required for limblines. The department agrees with the comment and responds that the rules require a float to be attached to a limline, which is actually a type of throwline. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would make it difficult to fish legally. The department disagrees with the comment and responds that requiring certain devices to be equipped with floats and reducing the period of validity of gear tags will not result in any significant barrier to participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would create hardships for anglers and campers who like to fish for a week at a time. The department disagrees with the comment and responds that requiring certain devices to be equipped with floats and reducing the period of validity of gear tags will not result in any significant barrier to participation, irrespective of the amount of time devoted to the regulated activity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would encourage people to violate. The department disagrees with the comment and responds that a person who consciously decides to violate the law is a violator who runs the risk of being detected, cited, convicted, and punished. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should not promulgate new rules when it does not enforce the current rules. The department disagrees with the comment and responds that enforcement personnel diligently enforce the law and will continue to do so. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed four-day period of validity for gear tags is inconvenient for people who live a long way away from where they fish. The department disagrees with the comment and responds that the rules are not and should not be predicated on the distance an angler must travel to engage in a regulated activity; however, the rule as adopted establishes a six-day period of validity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the dimensions of the gear tag are too large and that stamped metal gear tags should be lawful. The department disagrees with the comment and responds that the rules do not prescribe the physical dimensions of gear tags and that stamped metal gear tags are lawful, provided they bear the required information. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will just result in more trash. The department disagrees with the comment and responds that the rules will allow the department to more quickly identify and remove abandoned gear, thus reducing litter. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should define the term "free-floating." The department disagrees with the comment and responds that the plain and ordinary meaning of the phrase is sufficient to convey what needs to be understood by the term. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the gear tag validity period should be between five and seven days. The department agrees with the comment and has made changes accordingly.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

§57.971. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.
1. Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

2. Artificial lure--Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

3. Bait--Something used to lure any aquatic wildlife resource.

4. Cast net--A net which can be hand-thrown over an area.

5. Charter Vessel--A vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

6. Circle hook--A hook originally designed and manufactured so that the point of the hook is turned perpendicularly back toward the shank of the hook to form a generally circular or oval shape.

7. Coastal waters boundary--All public waters east and south of the following boundary are considered saltwater: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (FM Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004, thence northward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; Lakeview City Park Lake, West Guth Park Pond, and Waldron Park Pond in Nueces County; Galveston County Reservoir and Galveston State Park ponds #1-7 in Galveston County; Lake Burke-Crenshaw and Lake Nassau in Harris County; Fort Brown Resaca, Resaca de la Guerra, Resaca de la Palma, Resaca de los Cuates, Resaca de los Fresnos, Resaca Ranchero Viejo, and Town Resaca in Cameron County; and Little Chocolate Bayou Park Ponds #1 and #2 in Calhoun County are not considered coastal waters for purposes of this subchapter.

8. Community fishing lake--All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

9. Crab--All species within the families Portunidae and Menippidae.

10. Crab line--A baited line with no hook attached.

11. Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

12. Day--A 24-hour period of time that begins at midnight and ends at midnight.

13. Dip net--A mesh bag suspended from a frame attached to a handle.

14. Final processing--The cleaning of a dead wildlife resource for cooking or storage purposes.

15. Fish--

(A) Game fish--Alabama bass, blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, tripletail, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish--All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

16. Fishing--Taking or attempting to take aquatic animal life by any means.

17. Fish length--That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

18. Fish species names--The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "Common and Scientific Names of Fishes from The United States, Canada and Mexico."

19. Fishing guide--A person who, for compensation, accompanies, assists, or transports a person or persons engaged in fishing in the water of this state.

20. Fishing guide deck hand--A person in the employ of a fishing guide who assists in operating a boat for compensation to accompany or to transport a person or persons engaged in fishing in the water of this state.

21. Folding panel trap--A metallic or non-metallic mesh trap, the side panels hinged to fold flat when not in use, and suspended in the water by multiple lines.
(22) Gaff--Any hand-held pole with a hook attached directly to the pole.

(23) Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address, or customer number, of the person using the device, and, except for saltwater trotlines and crab traps fished under a commercial license, the date the device was set out.

(24) Gig--Any hand-held shaft with single or multiple points.

(25) Handfishing--Fishing by the use of hands only and without any other fishing devices such as gaff, pole hook, trap, stick, or spear.

(26) Headboat--A vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fare or, in the case of persons aboard fishing for or possessing coastal migratory fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

(27) Inside waters--All bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls.

(28) Jug line--A fishing line with five or less hooks and a gear tag tied to a free-floating device.

(29) Lawful archery equipment--Longbow, recurved bow, and compound bow.

(30) License year--The period of time for which an annual fishing license is valid.

(31) Natural bait--A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

(32) Paddle craft--Any non-motorized vessel.

(33) Paddle-craft fishing guide--A person who, for compensation, accompanies, assists, or transports a person or persons by means of a non-motorized vessel engaged in fishing in the coastal waters of this state.

(34) Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(35) Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(36) Purse seine--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(37) Residence--A permanent structure where a person regularly sleeps and keeps personal belongings such as furniture and clothes, but does not include a temporary abode or dwelling such as a hunting or fishing club, or any club house, cabin, tent, or trailer house or mobile home used as a hunting or fishing camp, or any hotel, motel, or rooming house used on a temporary basis.

(38) Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(39) Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (Callichirus islagrande) from their burrows.

(40) Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(41) Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

(42) Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(43) Throwline--A fishing line with:
   (A) five or less hooks;
   (B) one end attached to a permanent fixture;
   (C) a float attached at or above the water line; and
   (D) a gear tag.

(44) Trap--A rigid device of various designs and dimensions used to entrap aquatic life, including a man-made device such as a box, barrel, or pipe.

(45) Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(46) Trotline--A nonmetallic main fishing line with:
   (A) more than five hooks;
   (B) each end attached to a fixture;
   (C) floats attached at or above the water line; and
   (D) a gear tag.

(47) Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(48) Wildlife resources--For the purposes of this subchapter, all aquatic animal life.

§57.973. Devices, Means and Methods.

(a) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(b) Game and non-game fish may be taken only by pole and line in or on:
   (1) community fishing lakes;
   (2) sections of rivers lying totally within the boundaries of state parks;
   (3) any dock, pier, jetty, or other manmade structure within a state park;
   (4) Canyon Lake Project #6 (Lubbock County);
   (5) Lake Pflugerville (Travis County);
   (6) North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam;
   (7) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam; and
   (8) Wheeler Branch (Somervell County).

(c) No person may employ more than two pole-and-line devices at the same time on:
(1) any dock, pier, jetty, or other manmade structure within a state park;

(2) community fishing lakes that are not within or part of a state park;

(3) Canyon Lake Project #6 (Lubbock County);

(4) North Concho River (Tom Green County) from O. C. Fisher Dam to Bell Street Dam; and

(5) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(d) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subchapter.

(e) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(f) Aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only by hand or with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times provided by the Parks and Wildlife Code and regulations adopted by the Parks and Wildlife Commission.

(g) Device restrictions. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab as authorized by this subchapter.

(1) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(A) Only non-game fish may be taken with a cast net.

(B) In salt water, non-game fish may be taken for bait purposes only.

(2) Crab line. It is unlawful to fish a crab line for commercial purposes that is not marked with a floating white buoy not less than six inches in height, six inches in length and six inches in width bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the end fixtures.

(3) Crab trap. It is unlawful to:

(A) fish for commercial purposes under authority of a commercial crab fisherman's license with more than 20 crab traps at one time;

(B) fish for commercial purposes under authority of a commercial finfish fisherman's license with more than 20 crab traps at one time;

(C) fish for non-commercial purposes with more than six crab traps at one time;

(D) fish a crab trap in the fresh waters of this state;

(E) fish a crab trap that:

(i) exceeds 18 cubic feet in volume;

(ii) is not equipped with at least two escape vents (minimum 2-3/8 inches inside diameter) in each crab retaining chamber, and located on the outside trap walls of each chamber; and

(iii) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(II) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(III) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(a-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(b-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(c-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed;

(F) fish a crab trap for commercial purposes under authority of a commercial crab fisherman's license:

(i) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(ii) that is not marked with a white buoy bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(iii) that is marked with a buoy bearing a commercial crab fisherman's license plate number other than the commercial crab fisherman's license plate number displayed on the crab fishing boat;

(G) fish a crab trap for commercial purposes under authority of a commercial finfish fisherman's license:

(i) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(ii) that is not marked with a white buoy bearing the letter 'F' and the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(iii) that is marked with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(H) fish a crab trap for non-commercial purposes without a floating white buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide center stripe of contrasting color, attached to the crab trap;
(I) fish a crab trap in public salt waters for non-commercial purposes without a valid gear tag. Gear tags must be attached within 6 inches of the buoy and are valid for 10 days after date set out;

(J) fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine Mile Point, past the town of Rockport to a point at the east end of Talley Island including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula or possess, use or place:

(i) for recreational purposes, more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County; or

(ii) for commercial purposes, a crab trap in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County;

(K) remove crab traps from the water or remove crabs from crab traps during the period from 30 minutes after sunset to 30 minutes before sunrise;

(L) place a crab trap or portion thereof closer than 100 feet from any other crab trap, except when traps are secured to a pier or dock;

(M) fish a crab trap in public waters that is marked with a buoy made of a plastic bottle(s) of any color or size; or

(N) use or place more than three crab traps in public waters of the San Bernard River north of a line marked by the boat access channel at Bernard Acres.

(4) Dip net.

(A) It is unlawful to use a dip net except:

(i) to aid in the landing of fish caught on other legal devices; and

(ii) to take non-game fish.

(B) In salt water, non-game fish may be taken for bait purposes only.

(5) Folding panel trap.

(A) Only crabs may be taken with a folding panel trap.

(B) It is unlawful to use a folding panel trap with an overall surface area, including panels, exceeding 16 square feet.

(6) Gaff.

(A) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(B) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(7) Gig. Only non-game fish may be taken with a gig.

(8) Handfishing. For use in fresh water only.

(A) Only blue, channel, and flathead catfish may be taken by means of handfishing.

(B) It is unlawful to intentionally place or use a trap in public waters for the purpose of taking catfish by handfishing.

(9) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(A) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 6 days after the date set out, and must include the number of the permit to sell non-game fish taken from fresh water, if applicable;

(B) for commercial purposes that is not marked with an orange free-floating device that is less than six inches in length and three inches in diameter;

(C) for non-commercial purposes that is not marked with a free-floating device of any color other than orange that is less than six inches in length and three inches in diameter; and

(D) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(10) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment or crossbow.

(11) Minnow trap (fresh water and salt water). It is unlawful to use a minnow trap that is not marked with a floating, visible buoy of any color other than orange that is not less than six inches in height and six inches in width. The buoy must have a gear tag attached. A gear tag is valid for 6 days after the date it is set out.

(A) Only non-game fish may be taken with a minnow trap.

(B) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(12) Perch traps. For use in salt water only.

(A) Perch traps may be used only for taking non-game fish.

(B) It is unlawful to fish a perch trap that:

(i) exceeds 18 cubic feet in volume;

(ii) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(II) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(III) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(1) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once

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around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(b) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(c) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed;

(iii) is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 6 days after date set out.

(13) Pole and line.

(A) Game and non-game fish may be taken by pole and line. It is unlawful to use a pole and line to take or attempt to take fish by foul-hooking, snagging, or jerking. A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(B) Game and non-game fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take non-game fish.

(C) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to a point 800 yards downstream of the Canyon Lake dam outlet, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(14) Purse seine.

(A) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore.

(B) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(C) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(15) Sail line. For use in salt water only.

(A) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(B) Line length shall not exceed 1,800 feet from the reel to the sail.

(C) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(D) No float on the line may be more than 200 feet from the sail.

(E) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(F) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(G) There is no hook spacing requirement for sail lines.

(H) No more than one sail line may be used per fisherman.

(I) Sail lines may not be used by the holder of a commercial fishing license.

(J) Sail lines must be attended at all times the line is fishing.

(K) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(16) Sand pump. It is unlawful for any person to use a sand pump:

(A) that is not manually operated; or

(B) for commercial purposes.

(17) Seine.

(A) Only non-game fish may be taken with a seine.

(B) It is unlawful to use a seine:

(i) which is not manually operated;

(ii) with mesh exceeding 1/2-inch square; or

(iii) that exceeds 20 feet in length.

(C) In salt water, non-game fish may be taken by seine for bait purposes only.

(18) Shad trawl. For use in fresh water only.

(A) Only non-game fish may be taken with a shad trawl.

(B) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(C) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(19) Spear. Only non-game fish may be taken with a spear.

(20) Spear gun. Only non-game fish may be taken with spear gun.

(21) Throwline. For use in fresh water only.

(A) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(B) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(C) It is unlawful to use a throwline:
(i) that is not equipped with a gear tag. A gear tag is valid for 6 days after the date it is set out;
(ii) for commercial purposes that is not marked by an orange float that is less than six inches in length and three inches in diameter; and
(iii) for non-commercial purposes that is not marked with a float of any color other than orange that is less than six inches in length and three inches in diameter.

(22) Trotline.

(A) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(B) It is unlawful to use a trotline:
   (i) with a mainline length exceeding 600 feet;
   (ii) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 6 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;
   (iii) with hook interval less than three horizontal feet;
   (iv) with metallic stakes; or
   (v) with the main fishing line, attached hooks, and stagings above the water's surface.

(C) In fresh water, it is unlawful to use a trotline:
   (i) with more than 50 hooks;
   (ii) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County;
   (iii) for commercial purposes that is not marked by an orange float that is less than six inches in length and three inches in diameter, and attached to end fixtures; and
   (iv) for non-commercial purposes that is not marked with a float of any color other than orange that is less than six inches in length and three inches in diameter attached to each end fixture.

(D) In salt water:
   (i) it is unlawful to use a trotline:
      (I) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;
      (II) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;
      (III) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;
      (IV) baited with other than natural bait, except sail lines;
      (V) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or
      (VI) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past the town of Rockport to a point at the east end of Talley Island, including that part ofCopano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.
   (ii) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1:00 a.m. on Friday to 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.
   (iii) It is unlawful to fish for commercial purposes with:
      (I) more than 20 trotlines at one time;
      (II) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;
      (III) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;
      (IV) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercialfinfish fisherman's license plate number displayed on the finfish fishing boat.
   (iv) It is unlawful to fish for non-commercial purposes with:
      (I) more than 1 trotline at any time; or
      (II) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(23) Umbrella net.

(A) Only non-game fish may be taken with an umbrella net.
(B) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

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

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TRD-202000079
Robert D. Sweeney, Jr.
General Counsel
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Proposal publication date: September 27, 2019
For further information, please call: (512) 389-4775

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1201

The Comptroller of Public Accounts adopts amendments to §3.1201, concerning fee for outdoor advertising of cigarettes or tobacco products, without changes to the proposed text as published in the December 6, 2019, issue of the Texas Register (44 TexReg 7492). The rule will not be republished. The comptroller amends the rule to replace statutory references with definitions, to incorporate statutory changes made by House Bill 3475, 86th Legislature, 2019, and to remove outdated requirements and expired effective date language. The comptroller also amends the rule to include a title for penalties and address when a penalty is applicable for failure to remit tax when a report is due.

The comptroller amends subsection (a)(1) and (5) to replace statutory citations with the actual definition of cigarettes and the revised definition of tobacco products from House Bill 3475. See Tax Code, §154.001 and §155.001.

The comptroller amends subsection (c) to rename the title to reflect “Due date and reporting period”. The comptroller removes paragraph (2) regarding outdated reporting requirements for cigarettes and tobacco products. Additionally, the comptroller restructures subsection (c) to remove the graphic and incorporate the graphic's language relating to reporting requirements and the due dates in paragraphs (1) through (4).

The comptroller amends subsection (g)(1) to add the title “Penalty” to address a penalty is applicable when a purchaser fails to timely remit tax when due. Paragraph (2) removes existing language referencing the Tax Code and amends the language to include interest provisions related to delinquent reports.

The comptroller amends subsection (h) to remove the word “the” before all statutory references throughout this subsection.

The comptroller deletes subsection (j) to remove outdated language regarding the effective date of the fee imposed on cigarette and tobacco product outdoor advertising, which is no longer necessary to administer current law.

No comments were received regarding adoption of the amendment.

The section is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.


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 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER C. TAX PROVISIONS

40 TAC §815.117

The Texas Workforce Commission (TWC) adopts the following new section to Chapter 815, relating to Unemployment Insurance, without changes, as published in the October 11, 2019, issue of the Texas Register (44 TexReg 5892): Subchapter C. Tax Provisions, §815.117. This rule will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of amending the Chapter 815, Unemployment Insurance (UI) rules, is to implement the requirements of Senate Bill (SB) 2296, passed by the 86th Texas Legislature, Regular Session (2019), by providing clear guidelines for employers and the Agency regarding the circumstances in which an employer may designate a Common Paymaster for state unemployment tax reporting purposes.

On June 10, 2019, the Governor signed SB 2296, which amends §201.011(11) of the Texas Unemployment Compensation Act (TUCA). Effective January 1, 2020, the definition of "employing unit" includes a Common Paymaster as defined in 26 U.S.C.
§3306(p) of the Federal Unemployment Tax Act (FUTA). Under this section “if two or more related corporations concurrently employ the same individual and compensate such individual through a Common Paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.” Under §201.011(11)(B), related corporations utilizing a Common Paymaster must still adhere to the requirements of TUCA Chapter 204, Subchapter E.

Currently, the Texas Workforce Commission’s (Agency) Tax Department requires every employing unit to individually report wages for each of its employees. However, once SB 2296 becomes effective, certain related corporations will have the ability to designate one of those corporations as a Common Paymaster with respect to the employees that work concurrently for the related corporations.

Once approved by the Agency, the Common Paymaster will have the option to report the combined wages of any employee working for the Common Paymaster concurrently employed with one or more related corporations.

SB 2296 requires the Commission to adopt rules necessary to implement this new TUCA provision. The Commission recognized that in order to properly implement SB 2296, the Commission needed to define certain terms and set parameters for eligible related corporations which have established an allowable Common Paymaster arrangement. These rules address definitions for Common Paymaster, what constitute related corporations, and concurrent employment. Also required were application procedures, TWC method of allocating taxes, useful examples, and how this new tax arrangement will affect claims for unemployment benefits.

A primary aim of these rules will be to reduce confusion concerning what constitutes an allowable Common Paymaster structure. For example, under a Common Paymaster arrangement, an employee must actually perform services concurrently for the Common Paymaster and each of the related corporations employing the individual for the Common Paymaster to take advantage of this wage reporting method.

This means that a Common Paymaster structure is in no way similar to a Professional Employer Organization relationship because there is no co-employment relationship and since an individual must actually perform services for the Common Paymaster. Similarly, because an individual must perform services for the Common Paymaster, for a group of related corporations to utilize this arrangement, the Common Paymaster cannot be a purely administrative entity without employees. Payrolling is still not allowable under a Common Paymaster arrangement.

An additional purpose of these rules is to closely align with FUTA, and its corresponding regulations, so that employers utilizing a Common Paymaster at the federal level can easily match the same standards at the state level. It should be noted that for administrative purposes under these adopted rules, a group of related corporations meeting all requirements may only designate a single Common Paymaster.

These rule amendments are adopted pursuant to §201.011(11)(A), whereby the Legislature has required TWC’s three-member Commission (Commission) to exercise rulemaking authority to administer the provisions of §201.011(11).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. TAX PROVISIONS

TWC adopts the following amendment to Subchapter C:

§815.117. Employing Units: Common Paymaster

New Section 815.117 establishes parameters to be used by the Agency’s Tax Department for instances in which related corporations that concurrently employ the same workers delegate one of their constituent corporations to serve as a Common Paymaster for employment tax reporting purposes.

New subsection (a) limits the scope of this new rule to implementation of the Common Paymaster provisions related to the definition of “employing unit” (§201.011(11)), with respect to proper administration of the TUCA as required by SB 2296, 86th Texas Legislature, Regular Session.

New subsection (b) stipulates the definitions which will apply under §201.011(11). Those are:

Common Paymaster--A Common Paymaster of a group of two or more related corporations is the designated entity which disburses remuneration to concurrently employed individuals of the related corporations and is responsible for keeping books and records for the payroll with respect to those individuals. The following are also incorporated into this definition:

--The Common Paymaster is not required to disburse remuneration to all the employees of those two or more related corporations. However, this rule does not apply to any remuneration paid to an employee that is not paid through the Common Paymaster;

--A group of related corporations may only have one Common Paymaster for the group. A group of related corporations may not be subdivided to facilitate multiple Common Paymasters; and

--When two or more related corporations concurrently employ the same individual and compensate that individual through a Common Paymaster, the Common Paymaster being one of the related corporations for which the individual performs services, each of the corporations is considered to have paid only the remuneration as to that individual, unless the disbursing corporation fails to remit the taxes due.

Related Corporations--Two or more corporations are considered related corporations for an entire calendar quarter if any of the following tests are satisfied at any time during that calendar quarter:

--Parent-subsidiary controlled group. The common parent corporation owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of at least one of its subsidiaries, AND one or more of the corporations, common parent included, owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each of the subsidiaries;

--Brother-sister controlled group. Five or fewer persons who are individuals, estates, or trusts own more than 50 percent of the
Total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation;

--Combined group. A group of three or more corporations if each corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations; and at least one of those corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group;

--With respect to stock, when a corporation that does not issue stock is involved, corporations are related if either 50 percent or more of the members of one corporation's board of directors (or other governing body) are members of the other corporation's board of directors (or other governing body); or the holders of 50 percent or more of the voting power to select members of one corporation's board of directors (or other governing body) are concurrently the holders of more than 50 percent of that power with respect to the other corporation;

--With respect to concurrent officers and employees, corporations are related if 50 percent or more of one corporation's officers are concurrently officers of the other corporation; or 30 percent or more of one corporation's employees are concurrently employees of the other corporation.

Concurrent Employment--The simultaneous existence of an employment relationship between an individual and two or more corporations. Concurrent employment involves the performance of services by the individual for the benefit of the employing corporation, not merely for the benefit of the group of corporations, in exchange for remuneration. The following are also incorporated into this definition:

--The simultaneous existence of an employment relationship with each corporation is a decisive factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily inactive is immaterial;

--Employment is not concurrent with respect to one of the related corporations if the employee's employment relationship with that corporation is completely nonexistent during the periods when the employee is not performing services for that corporation;

--An individual who does not perform substantial services for a corporation is presumed not employed by that corporation; and

--A corporation which has no employees performing services for it in Texas cannot be the Common Paymaster for Texas employees of its related corporations.

New subsection (c) provides for procedures for submission of and approval by the Agency of a Common Paymaster application.

--Related corporations which compensate their employees through a Common Paymaster must file with the Agency the details of their plan on a form prescribed by the Agency. The details must include the names of the related corporations, the name of the Common Paymaster corporation and the concurrently employed individuals involved. The filing shall include documentation to substantiate the corporations are related as defined in the rule and that employees are concurrently employed. An amendment to the plan must be filed whenever there is a change in the related corporations participating in the plan, a change in the Common Paymaster or a change in the concurrently employed individuals involved.

--Plans and plan amendments submitted under the rule must be filed within the 30-day period following the end of the calendar quarter in which the plan is in effect. Eligibility of an employee to be compensated through a Common Paymaster shall be determined on a quarterly basis.

New subsection (d) stipulates how employment taxes required under the TUCA are to be allocated.

--A Common Paymaster making disbursements on behalf of related corporations to concurrently employed individuals is responsible for taxes, interest and penalties on all wages disbursed by it.

--If the Common Paymaster fails to remit taxes, interest and penalties on all wages disbursed by it as required, the Agency may hold each of the related corporations liable for a proportionate share of the obligation. "Proportionate share" may be based on sales, property, corporate payroll or any other reasonable basis that reflects the distribution of services of the pertinent employees between the related corporations. If there is no reasonable basis for allocating the amount owed, it shall be divided equally among the related corporations. If a related corporation fails to pay any amount allocated to it pursuant to this section, the Agency may hold any or all of the other related corporations liable for the full amount of the unpaid taxes, interest and penalties.

--A Common Paymaster is not a successor corporation pursuant to TUCA Chapter 204, Subchapter E, for concurrent employees unless the related corporation ceases operations and is acquired in its entirety by the corporation serving as the Common Paymaster.

--Wages paid by separate employing units may not be aggregated or combined for purposes of reporting, except as provided in this rule, unless there is an actual transfer of entity and experience rating as provided by TUCA Chapter 204, Subchapter E.

New subsection (e) describes benefit charging and notice procedures with respect to Common Paymaster arrangements.

--For purposes of charging benefits paid and mailing notices to base year employers, the Common Paymaster shall be considered the employer for all wages disbursed to individuals by it whether payment was for services performed for the common paymaster or for a related corporation.

--An employer seeking to establish a Common Paymaster arrangement must designate a mailing address for benefit claim notices with the Agency per §208.003 of the TUCA.

Finally, new subsection (f) provides examples for the public to clarify the definitions of "Common Paymaster," "Related Corporations," and "Concurrent Employment."

Common Paymaster:

--S, T, U, and V are related corporations with 2,000 employees collectively. Forty of these employees are concurrently employed and perform services for S and at least one other of the related corporations, during a calendar quarter. The four corporations arrange for S to disburse remuneration to thirty of these forty employees for their services. Under these facts, S is the common paymaster of S, T, U, and V with respect to the thirty employees. S is not a common paymaster with respect to the remaining employees.
Related Corporations:

Parent-subsidiary controlled group.

--P Corporation owns stock possessing 51 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

--Assume the same facts as in subsection (i). Assume further that S owns stock possessing 51 percent of the total value of shares of all classes of stock of X Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and X. The result would be the same if P, rather than S, owned the X stock.

--P Corporation owns 51 percent of the only class of stock of S Corporation and S, in turn, owns 30 percent of the only class of stock of X Corporation. P also owns 51 percent of the only class of stock of Y Corporation and Y, in turn, owns 30 percent of the only class of stock of X. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, X, and Y.

Brother-sister controlled group.

--The outstanding stock of corporations X and Y, which have only one class of stock outstanding, is owned by the following unrelated individuals: A owns 40% of X and 20% of Y; B owns 10% of X and 30% of Y; C owns 30% of X and 40% of Y; D owns 20% of X; and E owns 10% of Y. The result is that Corporations X and Y have 3 common owners - A, B, and C. D and E are disregarded from the brother-sister test because they don't have ownership in both companies. A, B, and C have the following identical ownership (the lesser of X or Y): A has 20%; B has 10%; and C has 30%. A, B, and C meet the identical ownership test because their identical ownership is more than 50 percent of X and Y.

Combined group.

--A, an individual, owns stock possessing 100 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 51 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations. AND Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y.

--Assume the same facts as in subsection (i) and further assume that corporation X owns 51 percent of the total value of shares of all classes of stock of corporation S. X, Y, Z, and S are members of the same combined group.

Concurrent Employment:

--M, N, and O are related corporations which use N as a common paymaster. Their respective headquarters are located in three separate cities several hundred miles apart. A is an officer of M, N, and O who performs substantial services for each corporation. A does not work a set length of time at each corporate headquarters, and when A leaves one corporate headquarters, it is not known when A will return, although it is expected that A will return. Under these facts, A is concurrently employed by the three corporations.

Summary of comments and agency responses.

The public comment period on the proposal began October 11, 2019, and ended November 12, 2019. TWC received one timely comment during this time.

Keith Ribnick, United States Department of Labor:

--Comment: We have reviewed and consulted with the Division of Legislation in the Office of Unemployment Insurance regarding the proposed Texas administrative rule related to the definition of "Common Paymaster" (attached). We did not identify any conformity issues with the proposed rule. If modifications are made to the proposed rule or if we can provide additional assistance, please let us know.

--Response: TWC appreciates the review and findings from the U.S. Department of Labor in accordance with its responsibility under federal law. No changes are necessary in response to this comment.

The rule is adopted under Texas Labor Code §201.011(11) and §301.0015, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of unemployment insurance services and activities.

The adopted rule affects Texas Labor Code, Title 4, Subtitle A, Texas Unemployment Compensation Act.

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

Filed with the Office of the Secretary of State on January 7, 2020.

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Director, Workforce Program Policy
Texas Workforce Commission

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