# 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 354. MEDICAID HEALTH SERVICES

### SUBCHAPTER A. PURCHASED HEALTH SERVICES

### DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

**1 TAC §354.1003**

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1003, concerning Time Limits for Submitted Claims. The amendment to §354.1003 is adopted without changes to the proposed text as published in the October 16, 2020 issue of the *Texas Register* (45 TexReg 7353). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

Under §354.1003, most Medicaid providers must submit claims to the Medicaid claims administrator within 95 days from the date of service or the claims will be denied for late filing. Additionally, providers must adhere to claims filing and appeal deadlines and all claims, including all appeals processes, must be finalized within 24 months of the date of service. On occasion, circumstances either partially or wholly beyond the providers' control result in claims being finalized outside of this 24-month timeliness requirement. This amendment adds an exception to the rule that allows HHSC to consider such situations as exceptions to the provider 24-month time limit for filing claims if the provider shows good cause and to the extent permitted by state and federal law.

COMMENTS

The 31-day comment period ended November 16, 2020.

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; Texas Government Code §531.033, which directs the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

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 29, 2021.

TRD-202100408
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Effective date: February 18, 2021
Proposal publication date: October 16, 2020
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### CHAPTER 393. INFORMAL DISPUTE RESOLUTION AND INFORMAL RECONSIDERATION

**1 TAC §§393.1 - 393.3**

The Texas Health and Human Services Commission (HHSC) adopts amendments to §393.1, concerning Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID); §393.2, concerning Informal Dispute Resolution for Assisted Living Facilities; and new §393.3 concerning Informal Dispute Resolution for Texas Home Living and Home and Community-based Service providers.

The amendment to §393.2 is adopted without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8437). The rule will not be republished.

The amendment to §393.1 and new §393.3 are adopted with changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8437). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §393.1 will comply with Senate Bill (S.B.) 304, 84th Legislature, Regular Session, 2015, which modified §531.058 Texas Government Code by requiring HHSC to contract with a disinterested non-profit organization to perform Informal Dispute Resolution (IDR) reviews for nursing facilities. To foster consistency, all three facility types IDR serves were included in the procurement. Additionally, amendments to this rule also align with House Bill (H.B.) 2025, 85th Legislature, Regular

Session, 2017, which modified Texas Health and Safety Code Chapters 242, 247, and 252. H.B. 2025 required a system to be developed to record and track the severity and scope of licensure violations for Intermediate Care Facilities (ICF/IIDs) and Assisted Living Facilities (ALFs).

The amendment to §393.2 will comply with S.B. 924, 85th Legislature, Regular Session, 2017, which modified Texas Health and Safety Code §247.051, concerning the IDR process for ALFs. This statute was modified to include the language in Texas Government Code §531.058 from S.B. 304 regarding the outsourcing of the IDR process to ensure it was also required of ALFs. Other modifications to that statute included provisions for Assisted Living Facility providers to be able to obtain documentation regarding the survey/investigation. Additionally, amendments to this rule also align with H.B. 2025.

The new §393.3 will comply with H.B. 2590, 85th Legislature, Regular Session, 2017, which modified Human Resources Code by adding a new section §161.0892. This new section directs HHSC to establish and outsource an IDR process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers.

COMMENTS

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

During this period, HHSC received comments regarding the proposed rules from four commenters, including Jacobson PLLC; and combined questions from Private Providers Association of Texas (PPAT), Providers Alliance for Community Services of Texas (PACSTX), and Texas Council of Community Centers (Texas Council). A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter requested relabeling of sections in proposed §393.1 and §393.3 to ensure that similar or identical provisions are in alignment.

Response: HHSC accepts this suggestion and will make the changes. New §393.3(h) was separated out from §393.3(g) and the following subsections relabeled accordingly.

Comment: A commenter recommended that the language from §393.2(j) regarding burden of proof be added to the corresponding sections in §393.1 and §393.3.

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. The language in §393.2(j) was required specifically for the ALF IDR process by S.B. 924 and HHSC will not extend this provision to the ICF and TxHmL/HCS rules without specific statutory direction, to avoid conflict with federal requirements regarding those programs.

Comment: A commenter recommended that the timeline language in §393.1(d) and 393.3(d) be changed from five to seven calendar days, or otherwise changed to "business" days.

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. The timelines stated are consistent with the current process for NF/ICF and HHSC has not noted any issues with those timelines. That amount of time allows adequate time and flexibility for both the providers and the contractor performing the reviews to ensure reviews are completed within the statutory timeframe.

Comment: A commenter recommended restoration of language deleted from §393.1(e)(6) regarding allowable methods of submitting supporting documentation.

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. As the IDR process is contracted out, HHSC seeks to maintain flexibility in this area to meet the requirements of future contracts. HHSC will publish the acceptable methods in the IDR procedures that are provided to the facility/provider prior to submitting an IDR, and will also maintain the IDR procedures on the HHSC website.

Comment: A commenter recommended language be added to §393.1(h)(2) and §393.3(g)(2) to clarify whether the determination is made for a portion of a finding or the finding in its entirety.

Response. HHSC accepts this suggestion and has added the word 'of' to §393.1(h)(2) and §393.3(h)(2), this Section being relabeled as stated in the response to the first comment above.

Comment: A commenter requested language be added to §393.1(p) and §393.3(o) to clarify in the rule that HHSC staff are expected to coordinate scheduling IDR conferences with the facility and the meeting can be rescheduled if the rescheduled date is "on or before the 22nd calendar day after HHSC received the IDR request."

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. The commenter is concerned with the coordination of scheduling IDR conferences, and whether or not the providers can reschedule a conference on or before the 22nd calendar day. In current practice, the contractor works diligently with providers to ensure the conference is scheduled on a date and time suitable for both parties, and within the allowable timeframes. Rescheduling conferences is not prohibited by the rule; however, the decision to reschedule is based on a number of factors (e.g., the 22nd calendar day, the reviewer's availability, etc.).

Comment: A commenter requested removal of the language stating that "questions are strictly limited to the review in question" describing scope of questions allowed under §393.1(q) and suggested that questioning should be only limited by time, not subject. The commenter expressed concerns that this language may limit a provider's ability to ask indirect questions about the survey; for example, the experience of the surveyor, or the facts leading up to the survey.

Response: HHSC disagrees and respectfully declines to revise the rule in response to this comment. The examples provided by the commenter are issues that may be germane to the review in question and would not necessarily be excluded by operation of the rule language as drafted, which is mainly intended to exclude questions relating to either unrelated or prior surveys.

Minor edits were made to correct formatting and punctuation in §393.1(h)(3) and (4).

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by Texas Government Code §531.038(a), which provides that the HHSC Executive Commissioner by rule establish an informal dispute resolution process that must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the commission under Section 32.021(d), Human Resources Code, or the Department of Aging and Disability Services or its successor agency under Chapter 242, 247, or 252, Health and Safety Code; and Texas Human Resources Code §161.0892(a) that provides that the Executive Commissioner of HHSC by rule establish an informal dispute resolution process for HCS and TxHmL waiver providers.

*§393.1. Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID).*

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for nursing facilities and intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID) (hereinafter referred to collectively as "facility") through which a facility may dispute deficiencies/violations cited against that facility by the State survey agency, or its designee.

(b) The HHSC IDR Department must receive a facility's written request for an IDR no later than the tenth calendar day after the facility's receipt of the official statement of deficiencies/violations from the State survey agency, or its designee. The facility must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website.

(c) Within three business days of its receipt of the facility's written request for an IDR, HHSC will notify the facility and the State survey agency's regional office under which the facility operates of its receipt of the request.

(d) Within five calendar days of HHSC's receipt of the facility's request for an IDR, HHSC must receive from the facility the facility's rebuttal letter and attached supporting documentation. The rebuttal letter must contain:

(1) a list of the deficiencies/violations disputed (only those deficiencies/violations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed);

(2) the reason or reasons each deficiency/violation is disputed; and

(3) the outcome desired by the facility for each disputed deficiency/violation.

(e) The facility submits its supporting documentation or information in the following format.

(1) Organize the attachments by deficiency/violation and cross-reference to the disputed deficiency/violation in the rebuttal letter.

(2) Ensure all information is labeled and legible.

(3) Highlight information relevant to the disputed deficiency/violation, such as a particular portion of a narrative.

(4) Describe the relevance of the documentation or information to the disputed deficiency/violation.

(5) Do not de-identify documents that name residents referenced in disputed deficiencies/violations.

(f) If the facility substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the facility's IDR request.

(g) It is the facility's responsibility to present sufficient credible information to HHSC to support the outcome requested by the facility.

(h) Possible outcomes of an IDR for nursing facilities and ICF/IID are:

(1) a determination that there is insufficient evidence to sustain a deficiency/violation;

(2) a determination that there is insufficient evidence to sustain a portion of or a finding of a deficiency/violation;

(3) a determination that there is sufficient evidence to sustain a deficiency/violation;

(4) a determination that there is insufficient evidence to sustain the deficiency/violation as cited but that there is sufficient evidence to sustain a different citation;

(5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Jeopardy or Substandard Quality of Care only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(i) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing federal or State standards, or attempts to clear previously corrected deficiencies/violations.

(j) Upon receipt of the facility's IDR request, the State survey agency must submit to HHSC the following supporting documentation:

(1) resident identifier list;

(2) report of contact; and

(3) Automated Survey Processing Environment (ASPEN) event ID number.

(k) Any information related to an IDR request that is received by HHSC from either the facility or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(l) HHSC may request additional information from the facility and/or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(m) All responses to shared information as described in subsections (j) and (k) of this section must be received no later than the tenth calendar day after the facility's rebuttal letter and supporting documentation are submitted.

(n) Ex parte communications by the facility or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(o) An eligible facility may participate in an IDR conference provided that the facility requested an IDR conference on the IDR request form.

(p) Any IDR conference will be scheduled by HHSC, or its designee on or before the 22nd calendar day after HHSC received the IDR request. If the facility is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(q) The IDR conference is an informal opportunity for an eligible facility to present important information previously submitted in the facility's rebuttal letter or responses to shared information. The facility and the State survey agency may attend any IDR conference, but neither party may present information that was not previously included in the Statement of Deficiencies/Licensing Violations, submitted in the provider's rebuttal letter, or responses to shared information as set forth in subsections (j), (k), and (l) of this section. While the facility may ask clarifying questions related to the information in the Statement of Deficiencies/Licensing Violations, the questions are strictly limited to the review in question.

(r) HHSC will complete the IDR no later than the 30th calendar day after its receipt of the facility's written request. The IDR recommendation shall be in writing, address all the issues raised by the facility, and explain the rationale for the recommendation.

(s) The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014.

(t) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(u) The State survey agency may revise an IDR recommendation as a result of a review and subsequent determination that the IDR recommendation may violate a federal law, regulation, or the CMS State Operations Manual.

(v) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between a facility and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

*§393.3. Informal Dispute Resolution for Texas Home Living and Home and Community-Based Service Providers.*

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers (hereinafter referred to collectively as "provider") through which a provider may dispute citations cited against that provider by the State survey agency.

(b) The HHSC IDR Department must receive a provider's written request for an IDR no later than the tenth calendar day after the provider's receipt of the final report from the State survey agency, or its designee. The provider must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website. The provider must also submit the final report containing the citations the provider wishes to dispute.

(c) Within three business days of its receipt of the provider's written request for an IDR, HHSC will notify the provider and the State survey agency of its receipt of the request.

(d) Within five calendar days of HHSC's receipt of the provider's request for an IDR, HHSC must receive from the provider, the provider's rebuttal letter and attached supporting documentation. The rebuttal letter must contain:

(1) a list of the citations disputed (only those citations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed);

(2) the reason or reasons each citation is disputed; and

(3) the outcome desired by the provider for each disputed citation.

(e) The provider submits its supporting documentation or information in the following format:

(1) organize the attachments by citation and cross-reference to the disputed citation in the rebuttal letter;

(2) ensure all information is labeled and legible;

(3) highlight information relevant to the disputed citation, such as a particular portion of a narrative;

(4) describe the relevance of the documentation or information to the disputed citation; and

(5) do not de-identify documents that name individuals referenced in disputed citations.

(f) If the provider substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the provider's IDR request.

(g) It is the provider's responsibility to present sufficient credible information to HHSC to support the outcome requested by the provider.

(h) Possible outcomes of an IDR for TxHmL and HCS are:

(1) a determination that there is insufficient evidence to sustain a citation;

(2) a determination that there is insufficient evidence to sustain a portion of or a finding of a citation;

(3) a determination that there is sufficient evidence to sustain a citation;

(4) a determination that there is insufficient evidence to sustain the citation as cited but that there is sufficient evidence to sustain a different citation;

(5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Threat only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(i) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing federal or State standards, or attempts to clear previously corrected citations.

(j) Upon receipt of the provider's IDR request, the State survey agency must submit the following to HHSC:

(1) report Log ID;

(2) contract number; and

(3) component code.

(k) Any information related to an IDR request that is received by HHSC from either the provider or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(l) HHSC may request additional information from the provider and/or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(m) All responses to shared information as described in subsections (j) and (k) above must be received no later than the tenth calendar day after the provider's rebuttal letter and supporting documentation are submitted.

(n) Ex parte communications by the provider or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(o) A provider may participate in an IDR conference provided that the provider requested an IDR conference on the IDR request form.

(p) Any IDR conference will be scheduled by HHSC, or its designee on or before the 22nd calendar day after HHSC received the IDR request. If the provider is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(q) The IDR conference is an opportunity for an eligible provider to present important information previously submitted in the provider's rebuttal letter or responses to shared information. The provider and the State survey agency may attend any IDR conference, but neither party may present information that was not previously included in the final report, submitted in the provider's rebuttal letter, or responses to shared information.

(r) HHSC will complete the IDR no later than the 30th calendar day after its receipt of the provider's written request. The IDR recommendation shall be in writing, address all the issues raised by the provider, and explain the rationale for the recommendation.

(s) The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014.

(t) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(u) The State survey agency may revise an IDR recommendation as a result of a review and subsequent determination that the IDR recommendation may violate a federal law, regulation, or State of Texas rule.

(v) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between a provider and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

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 26, 2021.

TRD-202100333

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Effective date: February 15, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 706-7273

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# TITLE 16. ECONOMIC REGULATION

## PART 1. RAILROAD COMMISSION OF TEXAS

### CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

The Railroad Commission of Texas (Commission) adopts amendments, new rules, and repeals in 16 TAC Chapter 13, relating to Regulations for Compressed Natural Gas (CNG). Sections 13.25 and 13.36 are adopted with changes and the remaining rules without changes from the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7847). Sections 13.25 and 13.36 will be republished.

In Subchapter A, Scope and Definitions, the Commission adopts amendments to §13.1, Applicability, Severability, and Retroactivity; the repeal of §13.2, Retroactivity; amendments to §13.3, Definitions; §13.4, CNG Forms; and §13.15, Penalty Guidelines and Enforcement.

In Subchapter B, General Rules for Compressed Natural Gas (CNG) Equipment Qualifications, the Commission adopts amendments to §13.21, Applicability; and §13.22, Odorization; new §13.23, Installation and Maintenance; amendments to §13.24, School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; and §13.25, Filings Required for Stationary CNG Installations; the repeal of §13.26, Design and Construction of Cylinders, Pressure Vessels, and Vapor Recovery Receivers; new §13.26, Notice of, Objections to, and Hearings on Proposed Stationary CNG Installations; the repeal of §§13.27 - 13.33, Pressure Relief Devices; Pressure Gauges; Pressure Regulators; Piping; Valves; Hose and Hose Connections; and Compression Equipment; amendments to §13.34, Vehicle Fueling Connection; §13.35, Application for an Exception to a Safety Rule; and §13.36, Report of CNG Incident/Accident; new §13.37, Appurtenances and Equipment; amendments to §13.38, Removal from CNG Service; §13.39, Filling Unapproved Containers Prohibited; and §13.40, Manufacturer's Nameplates and Markings on ASME Containers.

In Subchapter C, Classification, Registration, and Examination, the Commission adopts amendments to §13.61, License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; §13.62, Insurance Requirements; §13.63, Self-Insurance Requirements; §13.64, Irrevocable Letter of Credit; the repeal of §13.65, Statements in Lieu of Insurance Certificates; amendments to §13.67, Changes in Ownership, Form of Dealership, or Name of Dealership; the repeal of §13.68, Dealership Name Change; amendments to §13.69, Registration and Transfer of CNG Cargo Tanks or Delivery Units; §13.70, Examination and Exempt Registration Requirements and Renewals; §13.71, Hearings for Denial, Suspension, or Revocation of Licenses,

Manufacturer Registrations, or Certificates; §13.72, Designation and Responsibilities of Company Representatives and Operations Supervisors; §13.73, Employee Transfers; §13.75, Franchise Tax Certification and Assumed Name Certificate; and §13.80, Requests for CNG Classes.

In Subchapter D, CNG Compression, Storage, and Dispensing Systems, the Commission adopts the repeal of §13.92, System Component Qualification; amendments to §13.93, System Protection Requirements; the repeal of §§13.94 - 13.105, Location of Installations; Installation of Cylinders and Cylinder Appurtenances; Installation of Pressure Relief Devices; Installation of Pressure Regulators; Installation of Pressure Gauges; Installation of Piping and Hoses; Testing; Installation of Emergency Shutdown Equipment; Installation of Electrical Equipment; Stray or Impressed Currents and Bonding; Operation; and Fire Protection; and amendments to §13.106, Maintenance; and §13.107, Dispenser Installation.

In Subchapter E, Engine Fuel Systems, the Commission adopts the repeal of §13.132, System Component Qualification; amendments to §13.133, Installation of Fuel Supply Containers; the repeal of §§13.134 - 13.141, Installation of Venting Systems; Installation of Piping; Installation of Valves; Installation of Pressure Gauges; Installation of Pressure Regulators; Installation of Fueling Connection; Labeling; and System Testing; amendments to §13.142, Maintenance and Repair; and §13.143, Venting of CNG to the Atmosphere.

In Subchapter F, Residential Fueling Facilities, the Commission adopts the repeal of §13.182, Scope; amendments to §13.183, System Component Qualifications; the repeal of §§13.184 - 13.186, General; Installation; and Outdoor Installations; amendments to §13.187, Installation of Pressure Relief Devices; the repeal of §13.188 and §13.189, Installation of Pressure Gauges; and Pressure Regulation; amendments to §13.190, Piping and Hose; and the repeal of §§13.191 - 13.194, Testing; Installation of Emergency Shutdown Equipment; Operation; and Maintenance and Inspection.

The Commission adopts new Subchapter G, Adoption by Reference of NFPA 52 (Vehicular Gaseous Fuel Systems Code) to include new §13.201, Adoption by Reference of NFPA 52; §13.202, Clarification of Certain Terms Used in NFPA 52; and §13.203, Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted.

The Commission adopts new Subchapter H, Adoption by Reference of NFPA 55 (Compressed Gases and Cryogenic Fluids Code) to include new §13.301, Adoption by Reference of NFPA 55; §13.302, Clarification of Certain Terms Used in NFPA 55; and §13.303, Sections in NFPA 55 Adopted with Additional Requirements or Not Adopted. The Commission adopts to adopt the two NFPA standards to establish requirements for Texas CNG licensees and consumers consistent with most other states in the United States. Because NFPA 52 and 55 have been adopted in whole or in part by many states, the Texas CNG industry would benefit from their adoption because Texas companies would be held to the same standards.

The Commission received one comment on the proposal from CenterPoint Energy Resources generally supporting the proposal. CenterPoint suggested a clarification in the wording of §13.36 to change the word "event" to "incident or accident." The Commission agrees and has adopted that rule with this change.

The Commission also adopts two nonsubstantive clarifying changes in §13.25(b)(1)(D) and (5)(B).

The Commission adopts the amendments, new rules, and repeals to update and clarify the Commission's CNG rules. The main purpose of the rulemaking is to adopt by reference NFPA 52 and 55 in the new rules in Subchapters G and H. In addition to the new rules, the Commission adopts amendments to certain rules to incorporate or update references to sections in the NFPA standards, as well as other nonsubstantive clarifications. Rules adopted with these types of amendments include §§13.3, 13.4, 13.23, 13.25, 13.36, 13.37, 13.61, and 13.70.

Several rules are repealed; with the adoption by reference of NFPA 52 and 55, these rules are no longer necessary. Repealed rules include §§13.2, 13.26 - 13.33, 13.68, 13.92, 13.94 - 13.105, 13.132, 13.134 - 13.141, 13.182, 13.184 - 13.186, 13.188, 13.189, and 13.191 - 13.194.

Other rules with adopted amendments to add references to NFPA sections and make other clarifying changes include §§13.22, 13.34, 13.35, 13.38, 13.40, 13.93, 13.107, 13.133, 13.143, 13.183, 13.187, and 13.190.

The second purpose for the amendments, new rules, and repeals is to implement changes from the 86th Legislative Session. House Bill 2127 removed the requirement that manufacturers of CNG containers obtain a license from the Commission and instead requires registration with the Commission. Adopted changes to reflect this statutory change are found in §§13.3, 13.15, 13.61 - 13.63, 13.67, 13.70, 13.71, and 13.75. Operators will be required to comply with changes directly related to manufacturer registrations beginning February 15, 2021, the effective date of the amendments.

These rules also include nonsubstantive amendments to clarify existing language, correct outdated language such as incorrect division and department names, update references to other Commission rules, and ensure language throughout Chapter 13, and throughout the Commission's alternative fuels regulations, is consistent. Clarifying changes include amendments to improve readability such as removing repetitive language, adding internal cross references, and including language from a referenced section (e.g., a fee amount) to give the reader better access to applicable requirements.

Adopted amendments in §13.1 clarify that the requirements of Chapter 13 apply to the operation of CNG compression and dispensing systems in addition to their design and installation. Subsections (b) and (c) are moved from §13.21, and subsection (d) is moved from §13.2, which is repealed.

Adopted amendments to §13.3 remove definitions of terms that no longer appear in Chapter 13 or are only used within one section and, therefore, do not need to be defined. The amendments add definitions of "certificate holder," "certified," "licensed," "licensee," "operations supervisor," "registered manufacturer," "rules examination," "trainee," and "transfer system" as those terms are now used throughout the chapter. The amendments also clarify several existing definitions.

Adopted amendments in §13.4 remove the list of official forms from the rule language to ensure consistency with other chapters. All Commission forms are now located on the Commission's website. The amendments also specify the form amendment and adoption process, which is consistent with forms referenced in other Commission chapters.

New §13.23, relating to Installation and Maintenance, is added to ensure consistency among the Commission's alternative fuels regulations. It requires all CNG containers, valves, dispensers,

accessories, piping, transfer equipment, and gas utilization equipment to be installed and maintained in safe working order according to the manufacturer's instructions and the rules in Chapter 13.

Adopted amendments in §13.24, in addition to general updates and clarifications, clarify existing filing requirements for registering a CNG transport.

In addition to incorporating NFPA requirements, amendments to §13.25 make minor updates for clarity and change requirements to ensure consistency among the Commission's alternative fuels regulations. The amendments also reorganize the rule; several subsections are moved within §13.25 and subsection (l) was removed and relocated to §13.37.

New §13.26 specifies the process for notice of, objections to, and hearings on proposed stationary installations. The Commission's other alternative fuels regulations contain this process and it is added here for consistency.

Adopted amendments to §13.36 clarify existing requirements and include a change from the proposal as suggested by CenterPoint and discussed above.

Adopted amendments in §13.61 include changes to implement the registration requirement from House Bill 2127. "Manufacturer registration" is included alongside references to applications for license and exemptions, and the license categories are updated to include licenses currently offered by the Commission, including Categories 1A and 1B. New subsection (k) requires a new form, CNG Form 1001M, and specifies that a container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of CNG containers. The original registration fee is $1,000; the renewal fee is $600. Other wording generally clarifies license requirements and reflects the adoption of NFPA 52 and 55.

Adopted amendments to §13.67 specify the requirements for any changes in ownership, form of dealership, or name of dealership. The new rule incorporates existing procedures and reflects the process from the corresponding rule in Chapter 9 of this title.

Adopted amendments to §13.69 clarify requirements for registration and transfer of CNG cargo tanks or delivery units and conform the rule to similar provisions in Chapter 9 of this title.

Adopted amendments in §13.70 include requirements for individuals who perform work, directly supervise CNG activities, or are employed in any capacity requiring contact with CNG, in addition to certain NFPA-related amendments previously discussed. The amendments also ensure "certificate" and "certificate holder" are used throughout instead of using "certificate," "certificate holder," "certified," and "certification" inconsistently. Adopted wording clarifies requirements for certificate renewal and steps to renew a lapsed certificate. Other new wording specifies that an individual who passes the applicable examination with a score of at least 75% will become a certificate holder, clarifies where and when examinations are available, and states what an examinee must bring to the exam site. Further, the wording incorporates the examinations and their descriptions, which were previously included in a table, and clarifies the process for obtaining a management-level certificate.

Adopted amendments in §13.72 clarify filing requirements for company representatives, operations supervisors, and outlets, in addition to NFPA-related amendments previously discussed. The amendments specify the requirements for designating company representatives and operations supervisors, and change wording from "termination" to "conclusion of employment" to better communicate AFS's intent for when a licensee must notify AFS of a company representative's or operations supervisor's departure.

Amendments adopted in §13.73 update the process for licensees who hire certificate holders, including allowing notification to the Commission to include only the last four digits of the employee's Social Security Number.

Amendments adopted in §13.93 include updates due to NFPA changes and also require uprights, braces, and cornerposts to be anchored in concrete a minimum of 12 inches below the ground. This change ensures consistency among the Commission's alternative fuels regulations.

Adopted amendments in §13.107 include updates due to NFPA changes and also add language previously found in other sections of the chapter. New language in subsection (b) was moved from subsection (d) of §13.93 (relating to System Protection Requirements) and new language in subsection (d) of §13.107 was moved from §13.104(i) (relating to Operation).

Adopted amendments in §13.142 remove specific requirements related to damaged supply lines and pressure relief devices and add a provision requiring removal of a vehicle from CNG service if any component is not in safe working order.

Other adopted amendments are nonsubstantive clarifications or updates such as correcting Commission department or division names, reorganization of the rule text, or other similar revisions. These types of amendments are adopted in §§13.21, 13.39, 13.64, 13.71, 13.73, 13.80, and 13.106.

## SUBCHAPTER A. SCOPE AND DEFINITIONS

### 16 TAC §§13.1, 13.3, 13.4, 13.15

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100339

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Effective date: February 15, 2021
Proposal publication date: November 6, 2020
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**16 TAC §13.2**

The Commission adopts the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100338
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Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER B. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT QUALIFICATIONS

**16 TAC §§13.21 - 13.26, 13.34 - 13.40**

The Commission adopts the amendments and new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

*§13.25. Filings Required for Stationary CNG Installations.*

(a) General requirements. In addition to NFPA 52 §7.3.1, and NFPA 55 §4.1, no CNG container shall be placed into CNG service or an installation operated or used in CNG service until the requirements of this section, as applicable, are met and the facility is in compliance with the rules in this chapter and all applicable statutes, in addition to any applicable requirements of the municipality or the county where an installation is or will be located.

(b) Installations with an aggregate storage capacity of 84,500 standard cubic feet or more. The storage capacity of each container is based on the container's operating pressure.

(1) For installations with an aggregate storage capacity of 84,500 standard cubic feet or more, the licensee shall submit the following information to AFS at least 30 days prior to construction:

(A) CNG Form 1500;

(B) CNG Form 1500A with all applicable documents;

(C) a plat drawing from the appropriate appraisal district identifying:

*(i)* the facility's property boundaries;

*(ii)* the names of all real property owners within 500 feet; and

*(iii)* a 500-foot radius measured from the proposed container location on the site;

(D) a site plan of sufficient scale that identifies:

*(i)* the location, types, and sizes of all CNG containers and compression and dispensing equipment already on site or proposed to be on site;

*(ii)* the distances from the containers, compression equipment, dispensing equipment, and material handling equipment to property lines, buildings on the same property, any electric transmission lines, and railroads. If the area where the container and/or compression equipment will be installed is a leased area or utility easement, the site plan shall indicate the boundaries of the leased area or utility easement, regardless of the size of the property in which the lease or easement lies;

*(iii)* any known potential hazards;

*(iv)* the location of CNG dispensers and their distance from any proposed container (the nearest container if more than one), property lines, buildings on the same property, roadways, and railroad track centerlines;

*(v)* the location of the nearest public sidewalk, highway, street, or road and its distance to containers and equipment;

*(vi)* the location of all sources of ignition;

*(vii)* the location of other types of aboveground fuel containers, the type of fuel stored, and the distance to CNG containers and dispensing equipment; and

*(viii)* the location of other types of fuel dispensers, the type of fuel dispensed, and the distance to CNG containers and dispensing equipment;

(E) a nonrefundable fee of $50 for the initial application, or a nonrefundable fee of $30 for a resubmission; and

(F) if the facility is accessed by cargo tanks from a public highway under the jurisdiction of the Texas Department of Transportation, a statement or permit from the Texas Department of Transportation showing that the driveway is of proper design and construction to allow safe entry and egress of the CNG cargo tanks.

(2) Printed copies of site plans with a legend must be printed to the correct size for the legend or distance provided.

(3) Prior to the installation of any individual CNG container, AFS shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare. The Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations. The applicant shall provide additional information if requested by AFS. AFS may impose restrictions or conditions on the proposed CNG installation based on one or more of the following factors:

(A) nature and density of the population or occupancy of structures within 500 feet of the proposed or existing container locations;

(B) nature of use of property located within 500 feet of the CNG installation;

(C) type of activities on the installation's premises;

(D) potential sources of ignition that might affect a CNG leak;

(E) existence of dangerous or combustible materials in the area that might be affected by an emergency situation;

(F) any known potential hazards or other factors material to the public health, safety, and welfare.

(4) AFS shall notify the applicant in writing outlining its findings.

(A) When AFS notifies an applicant of an incomplete CNG Form 1500 or CNG Form 1500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate AFS review of the proposed installation.

(B) The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to AFS before the expiration date. AFS may extend the application period for up to an additional 90 days.

(5) If the application is administratively denied:

(A) AFS shall specify the deficiencies in the written notice required in paragraph (3) of this subsection.

(B) To proceed with the application, the applicant shall modify the submission and resubmit it for approval or request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure). If the Commission finds after a public hearing that the proposed installation complies with the rules in this chapter and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

*(i)* the applicant has introduced CNG into the system prior to final approval;

*(ii)* a physical inspection of the installation indicates that it is not installed in compliance with the submitted plat drawing for the installation, the rules in this chapter, or the statutes of the State of Texas; or

*(iii)* the installation constitutes a danger to the public health, safety, and welfare.

(6) The licensee shall not commence construction until notice of approval is received from AFS.

(A) If the subject installation is not completed within one year from the date AFS has granted construction approval, the application will expire.

(B) Prior to the date of expiration, the applicant may request in writing an extension of time of up to 90 days to complete the installation.

(C) If the applicant fails to request an extension of time within the time period prescribed in this paragraph, the applicant shall submit a new application before the installation can be completed.

(7) The applicant shall submit to AFS written notice of completed construction and the Commission shall complete the field inspection as specified in subsection (e) of this section. After the Commission has completed the inspection, the operator, pending the inspection findings, may commence CNG activities at the facility.

(8) A licensee shall not be required to submit CNG Form 1500, CNG Form 1500A, or a site plan prior to the installation of dispensers, equipment, piping, or when maintenance and improvements are being made at an existing CNG installation.

(9) If a licensee is replacing a container with a container of the same or less overall diameter and length or height, and is installing the replacement container in the identical location of the existing container, the licensee shall file CNG Form 1500.

(10) AFS may request CNG Form 1008, a Manufacturer's Data Report, or any other documentation or information pertinent to the installation in order to determine compliance with the rules in this chapter.

(11) For an installation that is a licensee outlet, the licensee shall submit CNG Form 1001A within 30 days of installation, in accordance with §13.61(j) of this title (relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals).

(c) Commercial installations with an aggregate storage capacity of less than 240 standard cubic feet water volume. The storage capacity of each container is based on the container's operating pressure.

(1) Within 10 calendar days following the completion of a commercial container installation, the licensee shall submit CNG Form 1501 to AFS stating:

(A) the installation fully complies with the statutes and the rules in this chapter;

(B) all necessary Commission licenses, certificates, and permits have been issued; and

(C) the date the installation has been placed into CNG service.

(2) The licensee shall pay a nonrefundable fee of $10 for each container, cascade, and compressor listed on the form. One fee is required for each cascade regardless of the number of cylinders in the cascade.

(A) AFS shall review the submitted information and shall notify the applicant in writing of any deficiencies.

(B) A nonrefundable fee of $20 shall be required for any resubmission.

(3) CNG activities may commence prior to the submission of CNG Form 1501 if the facility is in compliance with the rules in this chapter.

(d) Physical inspection of stationary installations.

(1) Aggregate storage capacity of 240 standard cubic feet water volume or more. The applicant shall notify AFS in writing when the installation is ready for inspection.

(A) If any non-compliance items are cited at the time of AFS' initial inspection, the installation shall not be placed into CNG service until the non-compliance items are corrected, as determined at the time of inspection, depending on the nature of the non-compliance items cited.

(B) If AFS does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the facility may operate conditionally until the initial inspection is completed.

(2) Aggregate storage capacity of less than 240 standard cubic feet water volume. After receipt of CNG Form 1501, AFS shall conduct an inspection as soon as possible to verify the installation described complies with the rules in this chapter. The facility may be operated prior to inspection if the facility fully complies with the rules in this chapter. If the initial inspection at a commercial installation results in the citation of non-compliance items, AFS may require that the subject container, including any piping, appliances, appurtenances, or equipment connected to it be immediately removed from CNG service until the applicant corrects the non-compliance items.

(3) Material variances. If AFS determines the completed installation varies materially from the application originally accepted, correction of the variance and notification to AFS or resubmittal of the application is required. AFS' review of such resubmitted application shall comply with subsection (b)(3) of this section.

(4) In the event an applicant has requested an inspection and AFS' inspection identifies non-compliance items requiring modifications by the applicant, AFS may assess an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

*§13.36. Report of CNG Incident/Accident.*

(a) At the earliest practical moment or within two hours following discovery, a licensee owning, operating, or servicing equipment or an installation shall notify AFS by telephone of any incident or accident involving CNG which:

(1) caused a death or personal injury requiring hospitalization;

(2) required taking an operating facility out of service;

(3) resulted in unintentional gas ignition requiring emergency response;

(4) meets the requirements of subsection (c) of this section;

(5) caused an estimated damage to the property of the operator, others or both totaling $50,000 or more, including gas loss;

(6) involves a single release of CNG during or following CNG transfer or during container transportation. Any loss of CNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. However, any loss occurring as a result of a pullaway shall be reported;

(7) could reasonably be judged as significant because of rerouting of traffic, evacuation of buildings, or media interest, even though it does not meet paragraphs (1) - (6) of this subsection; or

(8) is required to be reported to any other state or federal agency (such as the Texas Department of Public Safety or the United States Department of Transportation).

(b) The telephonic notice required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 or (844) 773-0305 and shall include the following:

(1) date and time of the incident;

(2) name of reporting operator;

(3) phone number of operator;

(4) location of leak or incident;

(5) personal injuries and/or fatalities;

(6) whether fire, explosion, or gas leak has occurred;

(7) status of gas leak or other immediate hazards;

(8) other significant facts relevant to the incident; and

(9) whether immediate assistance from AFS is requested.

(c) Any transport unit required to be registered with AFS in accordance with §13.69 of this title (relating to Registration and Transfer of CNG Cargo Tanks and Delivery Units) which is involved in an accident where there is damage to the tank, piping or appurtenances, or any release of CNG resulting from an accident shall be reported to AFS in accordance with this section regardless of the accident location. Any CNG powered motor vehicle used for school transportation or mass transit including any state owned vehicle which is involved in an accident resulting in a substantial release of CNG or damage to the CNG conversion equipment shall be reported to AFS in accordance with this section regardless of accident location.

(d) Following the initial telephone report, the licensee who made the telephonic report shall submit CNG Form 1020 to AFS. The form shall be postmarked within 14 calendar days of the date of initial notification to AFS, or within five business days of receipt of the fire department report, whichever occurs first, unless AFS grants authorization for a longer period of time when additional investigation or information is necessary.

(e) Within five business days of receipt, AFS shall review CNG Form 1020 and notify in writing the person submitting CNG Form 1020 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of CNG activities at the involved location.

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 26, 2021.

TRD-202100341
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Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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**16 TAC §§13.26 - 13.33**

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100340
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

**16 TAC §§13.61 - 13.64, 13.67, 13.69 - 13.73, 13.75, 13.80**

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100351
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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**16 TAC §13.65, §13.68**

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100342
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Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER D. CNG COMPRESSION, STORAGE, AND DISPENSING SYSTEMS

**16 TAC §§13.92, 13.94 - 13.105**

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100343
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Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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### 16 TAC §§13.93, 13.106, 13.107

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100344
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER E. ENGINE FUEL SYSTEMS

### 16 TAC §§13.132, 13.134 - 13.141

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100345
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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### 16 TAC §§13.133, 13.142, 13.143

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100346
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER F. RESIDENTIAL FUELING FACILITIES

### 16 TAC §§13.182, 13.184 - 13.186, 13.188, 13.189, 13.191 - 13.194

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100347
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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### 16 TAC §§13.183, 13.187, 13.190

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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Filed with the Office of the Secretary of State on January 26, 2021.

TRD-202100348
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Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER G. ADOPTION BY REFERENCE OF NFPA 52 (VEHICULAR GASEOUS FUEL SYSTEMS CODE)

### 16 TAC §§13.201 - 13.203

The Commission adopts the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100349
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Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER H. ADOPTION BY REFERENCE OF NFPA 55 (COMPRESSED GASES AND CRYOGENIC FLUIDS CODE)

**16 TAC §§13.301 - 13.303**

The Commission adopts the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100350
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Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas (Commission) adopts amendments, new rules, and repeals in 16 TAC Chapter 14. Sections 14.2040 and 14.2049 are adopted with changes. The rules will be republished. The remaining sections are adopted without changes from the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7881). The rules will not be republished. In Subchapter A, General Applicability and Requirements, the Commission adopts amendments to §14.2004, Applicability, Severability, and Retroactivity; §14.2007, Definitions; §14.2010, LNG Forms; and §14.2013, License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; the repeal of §14.2014, Military Fee Exemption; new §14.2014, Application for License or Manufacturer Registration (New and Renewal); the repeal of §14.2015, Penalty Guidelines for LNG Safety Violations; new §14.2015, Military Fee Exemption; the repeal of §14.2016, Licensing Requirements; new §14.2016, Penalty Guidelines and Enforcement; amendments to §14.2019, Examination Requirements and Renewals; §14.2020, Employee Transfers; and §14.2021, Requests for LNG Classes; the repeal of §14.2022, Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure; amendments to §14.2025, Designation and Responsibilities of Company Representatives and Operations Supervisors; and §14.2028, Franchise Tax Certification and Assumed Name Certificates; new §14.2029, Changes in Ownership, Form of Dealership, or Name of Dealership; amendments to §14.2031, Insurance Requirements; and §14.2034, Self-Insurance Requirements; the repeal of §14.2037, Components of LNG Stationary Installations Not Specifically Covered; amendments to §14.2040, Filings Required for Stationary LNG Installations; new §14.2041, Notice of, Objections to, and Hearings on Proposed Stationary LNG Installations; and new §14.2042, Physical Inspection of Stationary Installations; amendments to §14.2043, Temporary Installations; §14.2046, School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; §14.2049, Report of LNG Incident/Accident; and.§14.2052, Application for an Exception to a Safety Rule.

In Subchapter B, General Rules for All Stationary LNG Installations, the Commission adopts amendments to §14.2101, System Protection Requirements; new §14.2102. Installation and Maintenance; amendments to §14.2104, Testing of Containers; the repeal of §14.2107, Stationary LNG Storage Containers; amendments to §14.2110, LNG Container Installation Distance Requirements; the repeal of §14.2113, Maintenance Tanks; amendments to §14.2116, Venting of LNG; §14.2119, Transport Vehicle Loading and Unloading Facilities and Procedures; §14.2122, Pumps and Compressors Used for LNG and Refrigerants; and §14.2125, Hoses and Arms; the repeal of §14.2128, Communications and Lighting; amendments to §14.2131, Fire Protection; the repeal of §14.2134, Container Purging Procedures; amendments to §14.2137, Employee Safety and Training; and the repeal of §14.2140, Inspection and Maintenance.

In Subchapter D, General Rules for LNG Fueling Facilities, the Commission adopts amendments to §14.2304, General Facility Design; the repeal of §14.2307, Indoor Fueling; amendments to §14.2310, Emergency Refueling; and §14.2313, Fuel Dispensing Systems; new §14.2314, Removal from LNG Service; the repeal of §14.2316, Filings Required for Installation of Fuel Dispensers; amendments to §14.2319, Automatic Fuel Dispenser Safety Requirements; the repeal of §14.2322, Protection of Automatic and Other Dispensers; §14.2325, LNG Transport Unloading at Fueling Facilities; and §14.2328, Training, Written Instructions, and Procedures Required.

In Subchapter E, Piping Systems and Components for All Stationary LNG Installations, the repeal of §14.2404, Piping Materials; §14.2407, Fittings Used in Piping; §14.2410, Valves; and §14.2413, Installation of Piping; amendments to §14.2416, Installation of Valves; the repeal of §14.2419, Welding at Piping Installations; §14.2422, Pipe Marking and Identification;

§14.2425, Pipe Supports; §14.2428, Inspection and Testing of Piping; §14.2431, Welded Pipe Tests; §14.2434, Purging of Piping Systems; §14.2437, Pressure and Relief Valves in Piping; and §14.2440, Corrosion Control.

In Subchapter F, Instrumentation and Electrical Services, the Commission adopts the repeal of all rules in the subchapter, including §14.2501, Liquid Level Gauging; §14.2504, Pressure Gauges; §14.2507, Vacuum Gauges; §14.2510, Emergency Failsafe; §14.2513, Electrical Equipment; and §14.2516, Electrical Grounding and Bonding.

In Subchapter G, Engine Fuel Systems, the Commission adopts amendments to §14.2604, System Component Qualification, the repeal of §14.2607, Vehicle Fuel Containers; amendments to §14.2610, Installation of Vehicle Fuel Containers; the repeal of §14.2613, Engine Fuel Delivery Equipment; and §14.2616, Installation of Venting Systems and Monitoring Sensors; amendments to §14.2619, Installation of Piping; the repeal of §14.2622, Installation of Valves; amendments to §14.2625, Installation of Pressure Gauges; the repeal of §14.2628, Installation of Pressure Regulators; and §14.2631, Wiring; amendments to §14.2634, Vehicle Fueling Connection; §14.2637, Signs and Labeling; and §14.2640, System Testing.

In Subchapter H, LNG Transports, the Commission adopts amendments to §14.2701, DOT Requirements; §14.2704, Registration and Transfer of LNG Transports; §14.2705, Replacement Decals; §14.2707, Testing Requirements; §14.2710, Markings; §14.2737, Parking of LNG Transports and Container Delivery Units, and Use of Chock Blocks; and §14.2746, Delivery of Inspection Report to Licensee; and the repeal of §14.2749, Issuance of LNG Form 2004 Decal.

The Commission adopts new Subchapter I, Adoption by Reference of NFPA 52 (Vehicular Gaseous Fuel Systems Code) to include new §14.2801, Adoption by Reference of NFPA 52; §14.2802, Clarification of Certain Terms Used in NFPA 52; and §14.2803, Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted.

The Commission adopts new Subchapter J, Adoption by Reference of NFPA 59A (Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)) to include new §14.2901, Adoption by Reference of NFPA 59A; §14.2902, Clarification of Certain Terms Used in NFPA 59A; and §14.2903, Sections in NFPA 59A Adopted with Additional Requirements or Not Adopted. The Commission adopts to adopt the two NFPA standards to establish requirements for Texas LNG licensees and consumers consistent with most other states in the United States. Because NFPA 52 and 59A have been adopted in whole or in part by many states, the Texas LNG industry would benefit from their adoption because Texas companies would be held to the same standards.

The Commission received one comment on the proposal from CenterPoint Energy Resources generally supporting the proposal. CenterPoint suggested a clarification in the wording of §14.2049 to change the word "event" to "incident or accident." The Commission agrees and has adopted that rule with this change.

The Commission also adopts nonsubstantive clarifying changes in §14.2040(c)(1)(D) and (6)(B).

The Commission adopts the amendments, new rules, and repeals to update and clarify the Commission's LNG rules. The main purpose of the rulemaking is to adopt by reference NFPA 52 and 59A in the new rules in Subchapters I and J. In addition, the Commission adopts amendments to certain rules to incorporate or update references to sections in the NFPA standards, as well as other nonsubstantive clarifications. Rules adopted with these types of amendments include §§14.2019, 14.2025, 14.2052, 14.2101, 14.2110, 14.2116, 14.2119, 14.2122, 14.2125, 14.2131, 14.2304, 14.2313, 14.2319, 14.2416, 14.2604, 14.2610, 14.2619, 14.2625, 14.2634, 14.2637, and 14.2640.

Several rules are repealed; with the adoption by reference of NFPA 52 and 59A, these rules are no longer necessary. Rules that are repealed include §§14.2037, 14.2107, 14.2113, 14.2128, 14.2134, 14.2140, 14.2307, 14.2316, 14.2322, 14.2325, 14.2328, 14.2404, 14.2407, 14.2410, 14.2413, 14.2419, 14.2422, 14.2425, 14.2428, 14.2431, 14.2434, 14.2437, 14.2440, 14.2501, 14.2504, 14.2507, 14.2510, 14.2513, 14.2516, 14.2607, 14.2613, 14.2616, 14.2622, 14.2628, 14.2631, 14.2643, and 14.2749.

The second purpose for the amendments, new rules, and repeals is to implement changes from the 86th Legislative Session. House Bill 2127 removed the requirement that manufacturers of LNG containers obtain a license from the Commission and instead requires registration with the Commission. Changes to reflect this statutory change are found in §§14.2007, 14.2013, 14.2014, 14.2016, 14.2028, new 14.2029, and 14.2031. Operators will be required to comply with changes directly related to manufacturer registrations beginning February 15, 2021, the effective date of the amendments.

These rules also include nonsubstantive amendments to clarify existing language, correct outdated language such as incorrect division and department names, update references to other Commission rules, and ensure language within Chapter 14, and throughout the Commission's alternative fuels regulations, is consistent. Clarifying changes include amendments to improve readability such as removing repetitive language, adding internal cross references, and including language from a referenced section (e.g., a fee amount) to give the reader better access to applicable requirements.

Adopted amendments to §14.2007 remove definitions of terms that no longer appear in Chapter 14 or are only used within one section and, therefore, do not need to be defined. The amendments add definitions of "certificate holder," "pullaway," "registered manufacturer," and "rule examination," as those terms are now used throughout the chapter. The amendments also clarify several existing definitions.

Amendments in §14.2010 remove the list of official forms from the rule language to ensure consistency with other chapters. All Commission forms are now located on the Commission's website. The amendments also specify the form amendment and adoption process.

Amendments in §14.2013 include changes to implement the registration requirement from House Bill 2127.

New §14.2014 contains language moved from current §14.2016. New language includes subsection (h), which implements House Bill 2127 by requiring a new form, LNG Form 2001M, and specifying that a container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of LNG containers. The original registration fee is $1,000; the renewal fee is $600. Other adopted wording generally clarifies license requirements and reflects the adoption of NFPA 52 and 59A.

Current §14.2014 is repealed and the text is adopted as new §14.2015 with no changes other than the rule number.

Current §14.2015 is repealed and most of its text moved to §14.2016. The tables in §14.2016(a)(5) and (a)(11) include some changes from the existing tables in §14.2015. Most of these changes are made to reference container manufacturer requirements and penalty amounts, as well as the adoption of the NFPA documents. The remaining three tables moving from §14.2015 to new §14.2016 have no changes other than the Figure heading indicating the rule number.

New §14.2016(b) is moved from current §14.2022, which is repealed. New subsection (b) also incorporates references to registered manufacturers.

Adopted amendments in §14.2019 include requirements for individuals who perform work, directly supervise LNG activities, or are employed in any capacity requiring contact with LNG, in addition to certain NFPA-related amendments previously discussed. The amendments also ensure "certificate" and "certificate holder" are used throughout instead of using "certificate," "certificate holder," "certified," and "certification" inconsistently. Adopted wording clarifies requirements for certificate renewal and steps to renew a lapsed certificate. New wording specifies that an individual who passes the applicable examination with a score of at least 75% will become a certificate holder and clarifies where and when examinations are available and what an examinee must bring to the exam site. Further, the wording incorporates the examinations and their descriptions, which were previously included in a table, and clarifies the process for obtaining a management-level certificate. The examinations were previously listed in Figure 14.2019(a)(3) and are now adopted in §14.2019(c).

Amendments adopted in §14.2020 update the process for licensees who hire certificate holders, including allowing notification to the Commission to include only the last four digits of the employee's Social Security Number.

Adopted amendments in §14.2025 clarify filing requirements for company representatives, operations supervisors, and outlets, in addition to NFPA-related amendments previously discussed. The amendments specify the requirements for designating company representatives and operations supervisors, and change wording from "termination" to "conclusion of employment" to better communicate AFS's intent for when a licensee must notify AFS of a company representative's or operations supervisor's departure.

New §14.2029 specifies the requirements for any changes in ownership, form of dealership, or name of dealership. The new rule incorporates existing procedures and reflects the process from the corresponding rule in Chapter 9 of this title (relating to LP-Gas Safety Rules).

Amendments adopted in §14.2031 incorporate insurance requirements for registered manufacturers.

Amendments to §14.2040 remove language related to local requirements to ensure consistency among the Commission's alternative fuels regulations. Amendments reorganize the rule, make minor updates for clarity, and change requirements to ensure consistency among the Commission's alternative fuels regulations.

Existing §14.2040 (c) through (m) are deleted from §14.2040 and moved to new §§14.2041 and 14.2042 for better organization of the subject matter. Adopted wording in §14.2042 incorporates new terminology used by AFS such that a "safety rule violation" is now called a "non-compliance item."

Adopted amendments in §14.2046, in addition to general updates and clarifications, clarify existing filing requirements for registering an LNG transport.

Amendments to §14.2049 clarify existing requirements and include a change from the proposal as suggested by CenterPoint and discussed above.

Amendments in §14.2101 include updates due to NFPA changes, and require uprights, braces, and cornerposts to be anchored in concrete a minimum of 12 inches below the ground. This provision is added to ensure consistency among the Commission's alternative fuels regulations.

Amendments in new §14.2102 and §14.2314 ensure the rules match current Commission procedure as well as the corresponding rules in Chapter 9.

Amendments in §14.2704 clarify requirements for registration and transfer of LNG cargo tanks or delivery units and conform the rule to similar provisions in Chapters 9 and 13 of this title.

Amendments in §14.2710 clarify the requirements for markings on LNG transports. New language adopted in subsection (b) requires certain types of public transportation vehicles to mark the location of the manual shutoff valve.

Other amendments are nonsubstantive clarifications or updates such as correcting Commission department or division names, reorganization of the rule text, or other similar revisions. These types of amendments are adopted in §§14.2004, 14.2021, 14.2034, 14.2043, 14.2104, 14.2137, 14.2310, 14.2701, 14.2704, 14.2705, 14.2707, 14.2710, 14.2737, and 14.2746.

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

## SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

### 16 TAC §§14.2004, 14.2007, 14.2010, 14.2013 - 14.2016, 14.2019 - 14.2021, 14.2025, 14.2028, 14.2029, 14.2031, 14.2034, 14.2040 - 14.2043, 14.2046, 14.2049, 14.2052

The Commission adopts the amendments and new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as stan-

dards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

*§14.2040. Filings Required for Stationary LNG Installations.*

(a) General requirements. No LNG container shall be placed into LNG service or an installation operated or used in LNG service until the requirements of this section, as applicable, are met and the facility is in compliance with all applicable rules in this chapter and statutes. LNG systems under the jurisdiction of DOT Safety regulations in 49 CFR Part 193 shall comply with Chapter 8 of this title (relating to Pipeline Safety Regulations) prior to implementation of service.

(b) Commercial installations with an aggregate water capacity of less than 15,540 gallons.

(1) Within 10 calendar days following the completion of a commercial container installation, the licensee shall submit LNG Form 2501 to AFS stating:

(A) the installation fully complies with the statutes and the rules in this chapter;

(B) all necessary Commission licenses, certificates, and permits have been issued; and

(C) the date the installation has been placed into LNG service.

(2) The licensee shall pay a nonrefundable fee of $10 for each LNG container listed on the form.

(A) AFS shall review the submitted information and shall notify the applicant in writing of any deficiencies.

(B) A nonrefundable $20 fee shall be required for any resubmission.

(3) LNG activities may commence prior to the submission of LNG Form 2501 if the facility is in compliance with the rules in this chapter.

(c) Aggregate water capacity of 15,540 gallons or more.

(1) For stationary installations with an aggregate water capacity of 15,540 gallons or more, the licensee shall submit the following information to AFS at least 30 days prior to construction:

(A) LNG Form 2500;

(B) LNG Form 2500A with all applicable documents;

(C) a plat drawing from the appropriate appraisal district identifying:

*(i)* the facility's property boundaries;

*(ii)* the names of all real property owners within 500 feet; and

*(iii)* a 500-foot radius measured from the proposed container location on the site;

(D) a site plan of sufficient scale that identifies:

*(i)* fire protection which complies with §14.2131 of this title (relating to Fire Protection);

*(ii)* the location, types, and size of all LNG containers already on site or proposed to be on site,

*(iii)* the distances from the container(s) to property lines and buildings;

*(iv)* the location of LNG dispensers and their distance from the proposed container (the nearest container if more than one), property lines, buildings on the same property, roadways, driveways, and railroad track centerlines;

*(v)* any known potential hazards;

*(vi)* the location of any sources of ignition;

*(vii)* the location of other types of aboveground fuel containers, the type of fuel stored, and the distance to LNG containers and dispensing equipment;

*(viii)* the location of other types of fuel dispensers, the type of fuel dispensed, and the distance to LNG containers and dispensing equipment;

(E) a non-refundable fee of $50 for the initial application or a nonrefundable fee of $30 for any resubmission; and

(F) if the facility is accessed by cargo tanks from a public highway under the jurisdiction of the Texas Department of Transportation, a statement or permit from the Texas Department of Transportation showing that the driveway is of proper design and construction to allow safe entry and egress of the LNG cargo tanks.

(2) Site plans shall include a scale or legend indicating the distances or measurements described and printed copies of plans with a legend must be printed to the correct size for the legend or distance provided.

(3) Plans and specifications submitted under paragraph (1)(D) of this subsection shall be sealed by a registered professional engineer licensed and in good standing to practice in the State of Texas and who is qualified in the area of the design and construction of LNG facilities.

(4) If the applicant modifies the plans and specifications before tentative or interim approval is granted by AFS or the Commission, respectively, the plans and specifications shall be resealed by a registered professional engineer licensed to practice in the State of Texas and resubmitted to AFS.

(5) Prior to the installation of any individual LNG container, AFS shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare. The applicant shall provide additional information if requested by AFS.

(A) AFS may impose restrictions or conditions on the proposed LNG installation based on one or more of the following factors:

*(i)* nature and density of the population or occupancy of structures within 500 feet of the proposed or existing container locations;

*(ii)* nature of use of property located within 500 feet of the LNG installation;

*(iii)* type of activities on the installation's premises;

*(iv)* potential sources of ignition that might affect an LNG leak;

*(v)* existence of dangerous or combustible materials in the area that might be affected by an emergency situation;

*(vi)* any known potential hazards or other factors material to the public health, safety, and welfare.

(B) The Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations.

(6) AFS shall notify the applicant as follows:

(A) If AFS administratively approves the installation, AFS shall notify the applicant in writing within 21 business days.

(B) If the application is administratively denied:

*(i)* AFS shall notify the applicant in writing, specifying the deficiencies, within 21 business days.

*(ii)* To proceed with the application, the applicant shall modify the submission and resubmit it for approval or request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure). The subject of the submission shall not be operated or used in LNG service in this state until approved by the Commission following a hearing.

*(iii)* When AFS notifies an applicant of an incomplete LNG Form 2500 or LNG Form 2500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate AFS review of the proposed installation.

*(iv)* The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to AFS before the expiration date. AFS may extend the application period for up to an additional 90 days.

(7) The licensee shall not commence construction until notice of approval is received from AFS.

(A) If the subject installation is not completed within one year from the date AFS has granted construction approval, the application will expire.

(B) Prior to the date of expiration, the applicant may request in writing an extension of time of up to 90 days to complete the installation.

(C) If the applicant fails to request an extension of time within the time period prescribed in this paragraph, the applicant will be required to submit a new application before the installation can be completed.

(8) The applicant shall submit to AFS written notice of completed construction and the Commission shall complete the field inspection as specified in §14.2042 of this title (relating to Physical Inspection of Stationary Installations).

(9) The container may be placed into service after AFS has completed the inspection and determines the installation meets all safety requirements.

(10) The proposed installation shall not be operated or used in LNG service until approved by AFS.

(11) A licensee shall not be required to submit LNG Form 2500, LNG Form 2500A, or a site plan prior to the installation of pull-away devices, or emergency shutoff valves (ESV's), or when maintenance and improvements are being made to the piping system at an existing LNG installation.

(12) If a licensee is replacing a container with a container of the same or less overall diameter and length or height, and is installing the replacement container in the identical location of the existing container, the licensee shall file LNG Form 2500.

(d) AFS may request LNG Form 2008, a Manufacturer's Data Report, or any other documentation or information pertinent to the installation in order to determine compliance with the rules in this chapter.

(e) For an installation that is a licensee outlet, the operating licensee shall comply with §14.2014 of this title (relating to Applications for License or Manufacturer Registration (New and Renewal)) within 30 days of installation.

*§14.2049. Report of LNG Incident/Accident.*

(a) At the earliest practical moment or within two hours following discovery, a licensee owning, operating, or servicing equipment or an installation shall notify AFS by telephone of any incident or accident involving LNG which:

(1) involves a single release of LNG during or following LNG transfer or during container transportation. Any loss of LNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. Any loss occurring as a result of a pull-away shall be reported;

(2) caused an estimated damage to the property of the operator, others, or both totaling $50,000 or more, including gas loss;

(3) caused a death or any personal injury requiring hospitalization;

(4) required taking an operating facility out of service;

(5) resulted in an unintentional ignition of LNG requiring an emergency response;

(6) involved the LNG installation on any vehicle propelled by or transporting LNG;

(7) could reasonably be judged as significant because of rerouting of traffic, evacuation of buildings, or media interest, even though it does not meet paragraphs (1) - (6) of this subsection; or

(8) is required to be reported to any other state or federal agency (such as the Texas Department of Public Safety or U.S. Department of Transportation).

(b) Any transport unit required to be registered with AFS in accordance with §14.2704 of this title (relating to Registration and Transfer of LNG Transports) which is involved in an accident where there is damage to the tank, piping appurtenances, or any release of LNG resulting from the accident shall be reported to AFS, regardless of the accident location. Any LNG-powered motor vehicle used for school transportation or mass transit, including any state-owned vehicle, which is involved in an accident resulting in a release of LNG or damage to LNG equipment shall be reported to AFS, regardless of the accident location.

(c) The telephonic notice required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 or (844) 773-0305 and shall include the following:

(1) date and time of the incident;

(2) name of the reporting operator;

(3) phone number of the operator;

(4) location of the leak or incident;

(5) personal injuries and/or fatalities;

(6) whether fire, explosion, or leak has occurred;

(7) status of leak or other immediate hazards;

(8) other significant facts relevant to the incident; and

(9) whether immediate assistance from AFS is requested.

(d) Following the initial telephone report, the licensee who made the telephonic report shall submit LNG Form 2020 to AFS. The form shall be postmarked within 14 calendar days of the date of initial notification to AFS, or within five business days of receipt of the fire department report, whichever occurs first, unless AFS grants authorization for a longer period of time when additional investigation or information is necessary.

(e) Within five business days of receipt, AFS shall review LNG Form 2020 and notify in writing the person submitting LNG Form 2020 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of LNG activities at the involved location.

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 26, 2021.

TRD-202100353
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

♦ ♦ ♦

### 16 TAC §§14.2014 - 14.2016, 14.2022, 14.2037

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100352
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER B. GENERAL RULES FOR ALL STATIONARY LNG INSTALLATIONS

### 16 TAC §§14.2101, 14.2102, 14.2104, 14.2110, 14.2116, 14.2119, 14.2122, 14.2125, 14.2131, 14.2137

The Commission adopts the amendments and new rule under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100355
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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### 16 TAC §§14.2107, 14.2113, 14.2128, 14.2134, 14.2140

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and

maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100354
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER D. GENERAL RULES FOR LNG FUELING FACILITIES

### 16 TAC §§14.2304, 14.2310, 14.2313, 14.2314, 14.2319

The Commission adopts the amendments and new rule under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100357
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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### 16 TAC §§14.2307, 14.2316, 14.2322, 14.2325, 14.2328

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100356
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER E. PIPING SYSTEMS AND COMPONENTS FOR ALL STATIONARY LNG INSTALLATIONS

### 16 TAC §§14.2404, 14.2407, 14.2410, 14.2413, 14.2419, 14.2422, 14.2425, 14.2428, 14.2431, 14.2434, 14.2437, 14.2440

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of

nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100358
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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### 16 TAC §14.2416

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100359
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER F. INSTRUMENTATION AND ELECTRICAL SERVICES

### 16 TAC §§14.2501, 14.2504, 14.2507, 14.2510, 14.2513, 14.2516

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100360
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER G. ENGINE FUEL SYSTEMS

### 16 TAC §§14.2604, 14.2610, 14.2619, 14.2625, 14.2634, 14.2637, 14.2640

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of

nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100362
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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### 16 TAC §§14.2607, 14.2613, 14.2616, 14.2622, 14.2628, 14.2631

The Commission adopts the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100361
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER H. LNG TRANSPORTS

### 16 TAC §§14.2701, 14.2704, 14.2705, 14.2707, 14.2710, 14.2737, 14.2746

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100364
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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### 16 TAC §14.2749

The Commission adopts the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a

person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100363
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER I. ADOPTION BY REFERENCE OF NFPA 52 (VEHICULAR GASEOUS FUEL SYSTEMS CODE)

### 16 TAC §§14.2801 - 14.2803

The Commission adopts the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100365
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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## SUBCHAPTER J. ADOPTION BY REFERENCE OF NFPA 59A (STANDARD FOR THE PRODUCTION, STORAGE, AND HANDLING OF LIQUEFIED NATURAL GAS (LNG))

### 16 TAC §§14.2901 - 14.2903

The Commission adopts the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 26, 2021.

TRD-202100366
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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# CHAPTER 15. ALTERNATIVE FUELS PROGRAMS

### 16 TAC §§15.1 - 15.13

The Railroad Commission of Texas adopts the repeal of 16 Texas Administrative Code Chapter 15, relating to Alternative Fuels Programs, specifically §§15.1 - 15.13, relating to Purpose; Definitions; Establishment and Duration; Availability of Funds; Eligibility; Application; Conditions of Receipt of Rebate or Incen-

tive; Selection of Equipment and Installer; Rebate or Incentive Amount; Minimum Efficiency Factor; or Performance Standard; Verification, Safety, Disallowance, and Refund; Assignment of Rebate or Incentive; Compliance; and Complaints, without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7921). The repeals are adopted pursuant to House Bill 1818, 85th Legislative Session (2017) which repealed the statute authorizing the Alternative Fuels Research and Education program.

Texas Natural Resources Code Chapter 113, Subchapter I, provided authority to create the Alternative Fuels Research and Education Program. In 2013, House Bill 7 (83rd Legislature) repealed Texas Natural Resources Code, Chapter 113, Subchapter I, and moved the authority for the program to Texas Natural Resources Code §81.0681, which read (in part): "The commission shall adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state." Finally, House Bill 1818 of the 85th Legislature repealed §81.0681, thus eliminating the Alternative Fuels Research and Education Program.

The Commission received one comment from CenterPoint Energy in support of the proposed repeals.

The Commission adopts the repeals pursuant to House Bill 1818 (85th Legislature, 2017). House Bill 1818 repealed Nat. Res. Code §81.0681 which authorized the Commission to adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state.

Statutory authority: Texas Natural Resources Code, §81.0681.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81.

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 26, 2021.

TRD-202100337
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 475-1295

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# PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

## CHAPTER 33. LICENSING
## SUBCHAPTER B. FEES AND PAYMENTS

### 16 TAC §§33.22, 33.27, 33.30 - 33.32, 33.37 - 33.39

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts new rules in Chapter 33, Licensing, Subchapter B: §§33.22, 33.27, and 33.30 - 33.32, and 33.37 - 33.39 without changes to the text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8683). The title of Subchapter B is also changed from "License and Permit Surcharges" to "Fees and Payments" to more accurately describe its contents.

No comments were received.

In 2019, the Texas Legislature adopted House Bill 1545, which made significant amendments throughout the Alcoholic Beverage Code (Code). HB 1545 further required the commission to adopt a variety of new rules and amend others to implement its provisions. To adopt the necessary new and amended rules, the commission either has or will make changes to every subchapter in existing Chapter 33, Licensing. With these proposed rules and other related rulemaking packages, the commission is taking the opportunity presented by the extensive necessary changes to Chapter 33 to streamline and reorganize Chapter 33 to be more intuitive and user-friendly. The majority of the amendments are not intended to make substantive changes. Rather, they move rule provisions to more appropriate places and make other editorial changes for accuracy and consistency.

The rules are adopted pursuant to the commission's general powers and duties under §5.31 of the 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 28, 2021.

TRD-202100403
Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Effective date: February 17, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 487-9905

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## CHAPTER 45. MARKETING PRACTICES
## SUBCHAPTER F. ADVERTISING AND PROMOTION--ALL BEVERAGES

### 16 TAC §45.103

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended 16 TAC §45.103, On-Premises Promotions, without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8685). The rule will not be republished.

No comments were received.

Tex. Gov't Code §2001.0039 requires the agency to review its existing rules every four years and determine whether to readopt, readopt with amendments, or repeal the rule. As part of this regular review, the agency has reviewed §45.103 of its rules, which relates to and restricts the promotion of alcoholic beverages for on-site consumption. The reasons for the initial adoption of the rule continue to exist because it remains in the best interest of the state of Texas and its citizens to regulate promotions to discourage overconsumption of alcoholic beverages. However, amendments adopted will:

- allow tickets to certain charity events to include more than two alcoholic beverages in the price of a ticket;

- allow Public Entertainment Facilities, such as sports arenas, to sell special tickets or passes that include more than two alcoholic beverages in the price of the ticket or pass; and

- reinforce the legal duty of the seller and server of alcoholic beverages to refuse to serve an intoxicated or underage individual, regardless of the number of alcoholic beverages included with a ticket or pass held by that person.

The amendments are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the 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 28, 2021.

TRD-202100402
Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Effective date: February 17, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 487-9905

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# TITLE 19. EDUCATION

## PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER N. PUBLIC ACCESS TO COURSE INFORMATION

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter N, §4.227, Public Access to Course Information. Additionally, the Coordinating Board adopts the repeal of §4.229, concerning Public Access to Course Information without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7923) and will not be republished.

Specifically, the adopted amendment removes §4.227(11) as corresponding §4.229 is adopted for repeal. The information in those sections duplicated the details regarding required internet access to work-study information outlined in §22.129(f) and Texas Education Code §56.080.

Specifically, the adopted repeal eliminates duplicate language regarding required internet access to work-study information outlined in §22.129(f) and Texas Education Code §56.080.

No comments were received regarding the adoption of the amendment or repeal.

**19 TAC §4.227**

The amendment is adopted under the Texas Education Code, §§56.077 and 56.080, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas College Work-Study Program.

The adopted amendment affects Texas Education Code, §§56.077 and 56.080.

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 29, 2021.

TRD-202100409
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 18, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 427-6527

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**19 TAC §4.229**

The repeal is adopted under the Texas Education Code, §§56.077 and 56.080, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas College Work-Study Program.

The adopted repeal affects Texas Education Code, §§56.077 and 56.080.

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 29, 2021.

TRD-202100410
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Texas Higher Education Coordinating Board
Effective date: February 18, 2021
Proposal publication date: November 6, 2020
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### CHAPTER 13. FINANCIAL PLANNING

### SUBCHAPTER G. RESTRICTED RESEARCH EXPENDITURES

**19 TAC §13.122, §13.126**

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 13, Subchapter G, §13.122 and §13.126, concerning the Restricted Research Expenditures, without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7924). The rules will not be republished.

Specifically, the adopted amendment to §13.122 clarifies the definitions of terms used for determining restricted research expenditures, and the adopted amendment to §13.126 clarifies reporting requirements of restricted research expenditures.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Education Code, Sections 62.091 - 61.098, which provides the Coordinating Board with the authority to administer the Texas Comprehensive Research Fund and to adopt rules regarding standards and accounting methods for determining the amount of restricted research funds expended in a state fiscal year.

The adopted amendments affect Texas Education Code, Chapter 62, Subchapter E, Texas Comprehensive Research Fund, Subchapter F-1, Core Research Support Fund, and Subchapter G, National Research University Fund.

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 29, 2021.

TRD-202100411
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General Counsel
Texas Higher Education Coordinating Board
Effective date: February 18, 2021
Proposal publication date: November 6, 2020
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## SUBCHAPTER K. TECHNOLOGY WORKFORCE DEVELOPMENT GRANT PROGRAM

### 19 TAC §§13.190 - 13.197

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 13, Subchapter K, §13.190, §13.191, §13.192, §13.193, §13.194, §13.195, §13.196 and §13.197, concerning the Technology Workforce Development Grant Program (TWD Grant Program), without changes to the proposed text as published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7926) and will not be republished.

Specifically, this adopted repeal strikes out the entire Subchapter K. The TWD Grant Program was created by the 77th Texas Legislature, Regular Session, 2001, and originally codified as Texas Education Code, Chapter 51, Subchapter V (Technology Workforce Development) (Act of May 3, 2001, 77th Leg., R.S., Ch. 146, § 1, 2001 Tex. Gen. Laws 297-300) (S.B. 353). In 2003, these provisions were relettered and renumbered as Chapter 51, Subchapter X, §§ 51.851-51.860 (Act of May 20, 2003, 78th Leg., R.S., Ch. 1275, § 2(26), 2003 Tex. Gen. Laws 4141) (H.B. 3506).

The 82nd Texas Legislature first repealed Texas Education Code § 51.859, with an effective date of September 1, 2013 (Act of May 27, 2011, 82nd Leg., R.S., Ch. 1049, § 9.01(b)(1), 2011 Tex. Gen. Laws 2701) (S.B. 5). The 83rd Texas Legislature then repealed Texas Education Code Chapter 51, Subchapter X, in its entirety, with an effective date of September 1, 2013 (Act of May 26, 2013, 83rd Leg., R.S., Ch. 1155, § 62(2), 2013 Tex. Gen. Laws 2876 (S.B. 215).

Because the underlying statutory authority for the TWD Grant Program has been repealed, the Coordinating Board adopts the repeal of its rules.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Act of May 27, 2011, 82nd Leg., R.S., Ch. 1049, § 9.01(b)(1), 2011 Tex. Gen. Laws 2701) (S.B. 5). Act of May 26, 2013, 83rd Leg., R.S., Ch. 1155, § 62(2), 2013 Tex. Gen. Laws 2876 (S.B. 215).

The adopted repeal does not affect other provisions of 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.

Filed with the Office of the Secretary of State on January 29, 2021.

TRD-202100413
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Texas Higher Education Coordinating Board
Effective date: February 18, 2021
Proposal publication date: November 6, 2020
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## CHAPTER 17. RESOURCE PLANNING
## SUBCHAPTER L. FACILITIES AUDIT

### 19 TAC §17.113

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 17, Subchapter L, §17.113, Institutional Audit Cycle, without changes to the proposed text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8236) and will not be republished.

Texas Education Code §61.0583 requires the Texas Higher Education Coordinating Board (THECB) to conduct a comprehensive audit of educational and general facilities on the campuses of public senior colleges and universities and the Texas State Technical College System to verify the accuracy of the facilities inventory for each of those institutions. 19 TAC §17.113(b) requires that each institution be audited a minimum of once each five years.

Since the timeline requirement was adopted by rule and not specified in the Education Code, by changing §17.113, the THECB gains flexibility in the audit timeline for cases of natural disaster or other circumstances resulting in a need for prioritizing audits at an institution during a certain fiscal year. This change does not amend the rule text limiting these audits to not more than once every five years except upon specific request as required under §17.113.

Section 17.113(b) is amended to remove the requirement that institutions must be audited a minimum of once each five years to allow flexibility in the scheduling of the audits.

Section 17.113(c) is amended due to division name changes and provides that staff of the Coordinating Board will publish the schedule rather than specifying a division.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under the Texas Education Code, Section 61.0583, which provides the Coordinating Board with the authority to periodically conduct a comprehensive audit of all educational and general facilities on the campuses of public senior colleges and universities and the Texas State Technical College System and Texas Education Code, Section 61.027 which authorizes the Coordinating Board to adopt rules to effectuate the provisions of the Chapter.

The adopted amendment affects Texas Education Code §61.0583.

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 29, 2021.

TRD-202100414
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Texas Higher Education Coordinating Board
Effective date: February 18, 2021
Proposal publication date: November 6, 2020
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## CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §22.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter A, §22.1, General Provisions, without changes to the proposed text as published in the November 6, 2020, issue of *Texas Register* (45 TexReg 7927). The rules will not be republished.

Specifically, Texas Education Code (TEC), §61.027, authorizes the Coordinating Board to adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs. The amendments are adopted to provide institutions with greater clarity regarding defined financial aid terms throughout Chapter 22 and align the use of state and federal financial aid terms. Section 22.1 is amended to add the phrase "academic year" as a defined term throughout the chapter to align the use of the phrase in state financial aid programs with its use in federal financial aid programs. Remaining definitions are renumbered accordingly.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code (TEC), §61.027, which authorizes the Coordinating Board to adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs.

The adopted amendment affects Texas Administrative Code, Chapter 22.

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 29, 2021.

TRD-202100416
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Texas Higher Education Coordinating Board
Effective date: February 18, 2021
Proposal publication date: November 6, 2020
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# TITLE 22. EXAMINING BOARDS

## PART 11. TEXAS BOARD OF NURSING

## CHAPTER 211. GENERAL PROVISIONS

### 22 TAC §211.6

Introduction. The Texas Board of Nursing (Board) adopts amendments to §211.6, relating to Committees of the Board, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8962). The rule will not be republished.

Reasoned Justification. Pursuant to the Government Code §2001.034, the Board is authorized to adopt rules on an emergency basis if the Board finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of the rule on fewer than 30 days' notice. Under the Board's current rules, a quorum of the thirteen-member Board is required to convene in order to deliberate and vote on the adoption of emergency rules. Coordinating the appearance of a quorum of the Board on short notice can cause delay in situations that require flexibility, fluidity, and a rapid response.

The adopted amendments authorize the Eligibility and Disciplinary Committee (Committee) of the Board to convene and consider and approve the adoption of emergency rules. The Committee is a standing committee comprised of three members of the Board, one consumer member and two nurse members. Because Committee members are pre-assigned to serve on the Committee in three month intervals, convening the three-member Committee, as opposed to a quorum of the full Board, is less likely to cause delay in the adoption of rules under emergency conditions. The conditions of the Government Code §2001.034 would still be required to be met in order for the Committee to consider the adoption of emergency rules.

How the Section Will Function. Adopted §211.6(b)(3)(ii) authorizes the Eligibility and Disciplinary Committee to approve the adoption of rules on an emergency basis pursuant to Tex. Gov't Code §2001.034.

Public Comment. The public comment period closed on January 18, 2021. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the authority of the Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. 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 under 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.

Filed with the Office of the Secretary of State on January 27, 2021.

TRD-202100392
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Deputy General Counsel
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Effective date: February 16, 2021
Proposal publication date: December 18, 2020
For further information, please call: (512) 305-6822

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# CHAPTER 213. PRACTICE AND PROCEDURE

## 22 TAC §213.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.1, relating to Definitions, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8963) and will not be republished.

Reasoned Justification. The adopted amendments to §213.1 make non-substantive changes to the section in order to update outdated references to the Texas Board of Nurse Examiners.

How the Section Will Function. Adopted §213.1(2) defines *address of record* as the address of each licensee as provided to the Board of Nursing (as required by Board rules relating to Change of Name and/or Address) and currently found in §217.7 of this title (relating to Change of Name and/or Address). Adopted §213.1(8) defines the *Board* as the Board of Nursing appointed pursuant to Texas Occupations Code Annotated §301.051. Adopted §213.2(17) defines *Executive Director* as the executive director of the Board of Nursing. Adopted §213.1(28) defines *party* as a person who holds a license issued by the Board of Nursing or multistate licensure privilege, a person who seeks to obtain, retain, modify his or her license, or a multistate licensure privilege, or the Board of Nursing.

Public Comment. The public comment period closed on January 18, 2021. The Board did not receive any comments on the proposal.

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

Section 301.151 addresses the Board's rulemaking authority. 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 under 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.

Filed with the Office of the Secretary of State on January 26, 2021.

TRD-202100375
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Effective date: February 15, 2021
Proposal publication date: December 18, 2020
For further information, please call: (512) 305-6822

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## 22 TAC §213.20

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.20, relating to Informal Proceedings and Alternative Dispute Resolution (ADR), without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8964). The rule will not be republished.

Reasoned Justification. The adopted amendments to §213.20 are necessary to correct outdated references to the *Board of Nurse Examiners* within the text of the rule.

How the Section Will Function. The references to *Board of Nurse Examiners* in §213.20(h)(1)(C)(iv) and §213.20(h)(3) have been replaced with references to the *Board of Nursing*.

Public Comment. The public comment period closed on January 18, 2021. The Board did not receive any comments on the proposal.

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

Section 301.151 addresses the Board's rulemaking authority. 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 under 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.

Filed with the Office of the Secretary of State on January 27, 2021.

TRD-202100391
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Effective date: February 16, 2021
Proposal publication date: December 18, 2020
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## CHAPTER 215. PROFESSIONAL NURSING EDUCATION

### 22 TAC §215.2

Introduction. The Texas Board of Nursing (Board) adopts amendments to §215.2, relating to Definitions, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8965). The rule will not be republished.

Reasoned Justification. Minimum examination pass rates are required for a nursing education program's continued approval status. Examination pass rates are determined based upon a program's examination year. The current examination year for Texas professional nursing education programs is October 1 - September 30. This is a different time period than the examination year for Texas vocational nursing education programs, which is based on the calendar year (January 1 - December 31). The adopted rule amendments align the professional nursing education program exam year with the vocational nursing education program exam year, as well as with the exam year utilized by most accreditors and other boards of nursing.

The current examination year for Texas professional nursing education programs causes inconsistencies in reported NCLEX pass rates, since education programs have different academic years and graduation schedules. The National Council State Boards of Nursing (NCSBN) reports NCLEX state data based upon the calendar year, and many non-education settings require calendar year information. Accreditation agencies usually base their data on the calendar year, as well. Aligning program exam years would also permit the Board to calculate and report pass rates for all nursing education programs at the same time.

The Board distributed a survey, through NCSBN, to other member boards on August 14, 2020. Thirty-four (34) member boards responded to the survey. Eighteen percent (18%) of the responding member boards indicated their examination year was an academic year (one with a specific beginning and ending other than the calendar year); seventy-four percent (74%) indicated their examination year was the calendar year; and eight percent (8%) indicated they used another measure ("other"). The Board also consulted nursing accreditation agencies and other state agencies in Texas to determine if changing the exam year for Texas professional nursing education programs would result in unforeseen consequences or concerns. None were identified.

How the Section Will Function. Adopted §215.2(20) defines the examination year for a professional nursing education program, for the purpose of determining its annual NCLEX-RN® examination pass rate, as beginning January 1 and ending December 31.

Public Comment. The public comment period closed on January 18, 2021. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the authority of the Occupations Code §301.157 and §301.151.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301, as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.151 addresses the Board's rulemaking authority. 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 under 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.

Filed with the Office of the Secretary of State on January 26, 2021.

TRD-202100378
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Effective date: February 15, 2021
Proposal publication date: December 18, 2020
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## CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

### 22 TAC §217.23

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.23, relating to Balance Billing Dispute Resolution, with changes to the proposed text published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8454). The rule will be republished.

Reasoned Justification. The amendments are being adopted under the authority of the Insurance Code §752.0003 and §1467.003 and the Occupations Code §301.151 and implement the new requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, 1579.111 and the Insurance Code Chapter 1467, effectuated by the passage of Senate Bill (SB) 1264 during the 86th Legislative Session, effective September 1, 2019. In order to protect consumers, SB 1264 prohibits balance billing by many out of network providers, except in a narrow set of circumstances. Additionally, SB 1264 authorizes a new dispute resolution process for claim disputes between out of network providers and health benefit plan issuers and administrators.

The balance billing protections provided by SB 1264 generally apply to enrollees of health benefit plans offered by insurers and health maintenance organizations regulated by the Texas Department of Insurance (Department), as well as the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. The provisions of the bill apply to health care and medical services and supplies provided on or after January 1, 2020.

Under SB 1264, an out of network provider is prohibited from seeking payment for a balance bill from an enrollee *unless* the provider provides the enrollee with a written disclosure identifying the projected amounts for which the enrollee may be responsible and the circumstances under which the enrollee may be responsible for those amounts *and* the enrollee elects, in writing, to receive the health care or medical service or supply anyway. This exception only applies in non-emergencies when an enrollee elects to receive covered health care or medical services or supplies from a facility-based provider, diagnostic imaging provider, or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider or is provided in connection with a health care or medical service or supply that is provided by a participating provider.

The Department, under the authority of SB 1264, adopted rules to implement this exception to the balance billing prohibitions set forth in the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111. These rules took effect on June 25, 2020 (45 TexReg 4204).

Under the Department's rules, an enrollee's election to receive health care or a medical service or supply is only valid if the enrollee has a meaningful choice between an in network provider and an out of network provider; the enrollee was not coerced by another provider or his/her health benefit plan into selecting the out of network provider; and the enrollee signs a notice and disclosure statement at least ten business days before the service or supply is provided acknowledging that the enrollee may be liable for a balance bill and chooses to proceed with the service or supply anyway. Only an out of network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out of network provider may choose to participate in the claim dispute resolution process authorized by SB 1264 instead of balance billing an enrollee. The Department also adopted a notice and disclosure statement that must be filled out by the out of network provider and given to the enrollee if the provider chooses to engage in balance billing. In light of the many changes made by SB 1264, the provisions of the Board's current rule are now obsolete. The adopted amendments are necessary to implement the new requirements of SB 1264 and mirror the Department's adopted rules.

Changes as Adopted. The Board has made a minor editorial change to the text of the rule as adopted in response to comments. The word "facility" has been removed from subsection (d).

How the Section Will Function. The title of the section is adopted to read "Balance Billing Notice and Disclosure Requirements".

Adopted §217.23(a) identifies the purpose of the section, which is to implement the requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111 and the Insurance Code Chapter 1467 and notify licensees of their responsibilities under those sections.

Adopted §217.23(b) provides the definitions for terms used throughout the section and describes the applicability of the section. Under the adopted rule, the section only applies to a covered non-emergency health care or medical service or supply provided on or after January 1, 2020, by a facility based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider. Further, the adopted subsection makes it clear that the section applies only to providers that are subject to the Board's jurisdiction. For purposes of this rule, this includes an out of network licensee provider that provides non-emergency health care or medical services or supplies, diagnostic imaging services, or laboratory services at an in network health care facility or in connection with a health care or medical service or supply provided by a participating provider.

Adopted §217.23(c) sets forth the responsibilities of such licensee providers related to balance billing. First, consistent with the rules adopted by the Department, an out of network provider may not balance bill an enrollee receiving a non-emergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out of network provider knowing that the provider is out of network and the enrollee may be financially responsible for a balance bill. An enrollee's legal representative or guardian may elect on behalf of an enrollee.

Second, an enrollee elects to obtain a service or supply only if the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out of network provider; the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election; and the out of network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in the later provisions of the rule. Under the adopted rule, a meaningful choice does not exist for an enrollee if an out of network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator. Further, a

provider engages in coercion if the provider charges or attempts to charge a nonrefundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election.

Third, if an out of network provider elects to balance bill an enrollee rather than participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467, the out of network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in the later provisions of this rule prior to scheduling the non-emergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form referenced in the later provisions of this rule.

Fourth, if the medical service or supply is provided and a balance bill is sent to the enrollee, each out of network provider, or the provider's agent or assignee, must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

Finally, the Department adopted Form AH025 as the notice and disclosure statement to be used by out of network providers subject to the requirements of SB 1264. The Board adopts this form by reference. Form AH025 may be accessed on the Department's website at www.tdi.texas.gov/forms. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a standalone document and cannot incorporated into any other document.

A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement is not eligible to participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467. This prohibition does not apply, however, if the enrollee's election is defective or rescinded by the enrollee.

Adopted §217.23(d) relates to the Board's complaint investigation and resolution. The Board is authorized under the Insurance Code §752.0003 to take disciplinary action against a licensee that violates a law that prohibits the licensee from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Licensees may also be subject to additional consequences pursuant to the Insurance Code §752.0002. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After its investigation has concluded, if the Board determines that a licensee has engaged in improper billing practices or bad faith participation or has committed a violation of the Nursing Practice Act, the Insurance Code Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

Public Comment. The public comment period closed on December 28, 2020. The Board received written comments from Quest Diagnostics and the Texas Medical Association.

Summary of Comments Received.

*General Comment*

A commenter representing Quest Diagnostics states that it applauds the state's focus on the important issue of surprise and balance billing, but proposes minor amendments to the regulations to make them even stronger and effective. Specifically, the commenter recommends setting a minimum required payment to out-of-network providers of 150% of the Medicare rate. The commenter states that, while it is important to protect patients from receiving surprise bills, it is also important to ensure that providers, particularly clinical labs, receive fair and reasonable reimbursement for the services they perform.

*Agency Response to Comment:* The Board declines to make the requested change. The Board does not find that SB 1264 grants it statutory authority to establish required payments for out-of-network providers.

*§217.23(d)*

A commenter representing the Texas Medical Association states that the language of subsection (d) closely tracks the language of the Insurance Code §752.0003, except for the addition of the word "facility" in the subsection. The commenter requests that the Board clarify the basis and intent of this additional term.

*Agency Response to Comment:* The Board has removed the term "facility" from the rule text as adopted.

Statutory Authority.

The amendments are adopted under the authority of the Insurance Code §752.0003(c) and §1467.003 and the Occupations Code §301.151.

Section 752.0003 (a) provides that an appropriate regulatory agency that licenses, certifies, or otherwise authorizes a physician, health care practitioner, health care facility, or other health care provider to practice or operate in this state may take disciplinary action against the physician, practitioner, facility, or provider if the physician, practitioner, facility, or provider violates a law that prohibits the physician, practitioner, facility, or provider from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Section 752.0003(c) provides that a regulatory agency described by subsection (a) or the Commissioner may adopt rules as necessary to implement this section.

Section 1467.003(a) provides that the Commissioner, the Texas Medical Board, and any other appropriate regulatory agency shall adopt rules as necessary to implement their respective powers and duties under this chapter.

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 under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

*§217.23. Balance Billing Notice and Disclosure Requirements.*

(a) Purpose. The purpose of this section is to implement the requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111 and the Insurance Code Chapter 1467 and notify licensees of their responsibilities under those sections.

(b) Definitions and Applicability of Section.

(1) Definitions. Terms defined in the Insurance Code §1467.001 have the same meanings when used in this section, unless the context clearly indicates otherwise. Additionally, for purposes of this section, a "balance bill" is a bill for an amount greater than an applicable copayment, coinsurance, and deductible under an enrollee's health benefit plan, as specified in the Insurance Code §§1271.157(c), 1271.158(c), 1301.164(c), 1301.165(c), 1551.229(c), 1551.230(c), 1575.172(c), 1575.173(c), 1579.110(c), or 1579.111(c).

(2) Applicability. This section only applies to a covered non-emergency health care or medical service or supply provided on or after January 1, 2020, by:

(A) a facility based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or

(B) a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider. Further, this section is limited to providers that are subject to the Board's jurisdiction.

(c) Responsibilities of Licensee.

(1) An out of network provider may not balance bill an enrollee receiving a non-emergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out of network provider knowing that the provider is out of network and the enrollee may be financially responsible for a balance bill. An enrollee's legal representative or guardian may elect on behalf of an enrollee.

(2) An enrollee elects to obtain a service or supply only if:

(A) the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out of network provider. No meaningful choice exists if an out of network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator;

(B) the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election. A provider engages in coercion if the provider charges or attempts to charge a nonrefundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election; and

(C) the out of network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in paragraph (3) of this subsection.

(3) If an out of network provider elects to balance bill an enrollee rather than participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467, the out of network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in subparagraph (B) of this paragraph prior to scheduling the non-emergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form referenced in subparagraph (B) of this paragraph.

(A) Each out of network provider, or the provider's agent or assignee, must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years if the medical service or supply is provided and a balance bill is sent to the enrollee. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

(B) The Texas Department of Insurance has adopted Form AH025 as the notice and disclosure statement to be used under this subsection. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a standalone document and not incorporated into any other document. The form is available from the Texas Department of Insurance by accessing its website at www.tdi.texas.gov/forms.

(4) A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement under this subsection is not eligible to participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467. This prohibition does not apply if the election is defective or rescinded by the enrollee under paragraph (3) of this subsection.

(d) Complaint Investigation and Resolution. The Board is authorized under the Insurance Code §752.0003 to take disciplinary action against a licensee that violates a law that prohibits the licensee from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Licensees may also be subject to additional consequences pursuant to the Insurance Code §752.0002. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After investigation, if the Board determines that a licensee has engaged in improper billing practices or bad faith participation or has committed a violation of the Nursing Practice Act, the Insurance Code Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

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 26, 2021.

TRD-202100367
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Texas Board of Nursing
Effective date: February 15, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 305-6822

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# CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

## 22 TAC §222.4

Introduction. The Texas Board of Nursing (Board) adopts amendments to §222.4, relating to Minimum Standards for Prescribing or Ordering Drugs and Devices, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8966). The rule will not be republished.

Reasoned Justification. House Bill (HB) 2174, enacted during the 86th Legislative Session, requires prescriptions for controlled substances to be issued electronically after January 1, 2021, unless certain prescribed exceptions apply. One of the specified statutory exceptions provides for a waiver process. Pursuant to the Health & Safety Code §481.0755(a)(9) and §481.0756, a prescriber may issue a non-electronic prescription for a controlled substance if the prescriber has received a waiver from the prescriber's respective licensing agency. The waiver is valid for one year after issuance. A prescriber may re-apply for a subsequent waiver not earlier than 30 days prior to the expiration of the waiver, so long as circumstances that necessitated the waiver continue. The adopted amendments are necessary to implement the Board's waiver process under HB 2174.

Pursuant to the Health & Safety Code §481.0756(d), the Texas Pharmacy Board must adopt rules establishing eligibility for a waiver, including economic hardship; technological limitations not reasonably within the control of the prescriber; or other exceptional circumstances demonstrated by the prescriber. Further, pursuant to §481.0756(e), the Board is required to adopt rules for the granting of waivers that are consistent with those rules adopted by the Texas Pharmacy Board. The Board has worked cooperatively with the Texas Pharmacy Board to ensure that the Board's adopted rules are consistent with the amendments proposed (45 TexReg 6949) and adopted by the Texas Pharmacy Board (45 TexReg 8866).

How the Section Will Function. In general, adopted §222.4(c) sets forth the Board's waiver process from electronic prescribing requirements.

Adopted §222.4(c)(1) makes clear that licensee prescribers must issue their prescriptions electronically beginning January 1, 2021, unless one of the specified circumstances in the Health & Safety Code §481.0755(a) applies.

Under adopted §222.4(c)(2), a licensee prescriber may request a waiver from electronic prescribing requirements by submitting a waiver request to the Board that demonstrates the circumstances necessitating a waiver from the electronic prescribing requirements, including: (A) economic hardship, taking into account factors including: (i) any special situational factors affecting either the cost of compliance or ability to comply; (ii) the likely impact of compliance on profitability or viability; and (iii) the availability of measures that would mitigate the economic impact of compliance; (B) technological limitations not reasonably within the control of the licensee prescriber; and (C) other exceptional circumstances demonstrated in the waiver request.

Adopted §222.4(c)(3) limits the waiver to a one-year period, consistent with the Health & Safety Code §481.0756(f). If circumstances that originally necessitated the waiver continue beyond that time period, the rule permits the licensee prescriber to re-apply to the Board for a subsequent waiver no earlier than the 30th day prior to the expiration of the original waiver. This is also consistent with the limitations of §481.0756(f).

Public Comment. The public comment period closed on January 18, 2021. The Board did not receive any comments on the proposal.

Statutory Authority.

The amendments are adopted under the authority of the Occupations Code §301.151 and the Health & Safety Code §§481.075, 481.0755, and 481.0756.

Section 301.151 addresses the Board's rulemaking authority. 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 under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 481.075(a) requires a practitioner who prescribes a controlled substance listed in Schedule II to, except as provided by Section 481.074(b-1) or 481.0755 or a rule adopted under Section 481.0761, record the prescription in an electronic prescription that includes the information required by this section.

Section 481.0755(a) provides that, notwithstanding Sections 481.074 and 481.075, a prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued: (1) by a veterinarian; (2) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, as prescribed by board rule; (3) by a practitioner to be dispensed by a pharmacy located outside this state, as prescribed by board rule; (4) when the prescriber and dispenser are in the same location or under the same license; (5) in circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing; (6) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing; (7) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription; (8) for a drug under a research protocol; (9) by a practitioner who has received a waiver under Section 481.0756 from the requirement to use electronic prescribing; (10) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition; or (11) before January 1, 2021.

Section 481.0756(a) provides that the appropriate regulatory agency that issued the license, certification, or registration to a prescriber is authorized to grant a prescriber a waiver from the electronic prescribing requirement under the provisions of this section. Section 481.0756(b) provides that the board shall convene an interagency workgroup that includes representatives of each regulatory agency that issues a license, certification, or registration to a prescriber. Section 481.0756(c) states that the work group described by Subsection (b) shall establish recommendations and standards for circumstances in which a waiver from the electronic prescribing requirement is appropriate and a process under which a prescriber may request and receive a waiver. Section 481.0756(d) provides that the board shall adopt rules establishing the eligibility for a waiver, including: (1) economic hardship; (2) technological limitations not reasonably within the control of the prescriber; or (3) other exceptional circumstances demonstrated by the prescriber. Section 481.0756(e) states that each regulatory agency that issues a license, certification, or registration to a prescriber shall adopt rules for the granting of waivers consistent with the board

rules adopted under Subsection (d). Section 481.0756(f) states that a waiver may be issued to a prescriber for a period of one year. A prescriber may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

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 27, 2021.

TRD-202100393
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Effective date: February 16, 2021
Proposal publication date: December 18, 2020
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## CHAPTER 223. FEES

### 22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) adopts amendments to §223.1, concerning Fees, without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8969) and will not be republished.

Reasoned Justification. On October 8, 2019, the Office of the Governor requested that occupational licensing agencies review their licensing rules and policies to identify areas where they could remove burdensome or unreasonable obstacles to licensure, specifically developing and implementing plans to reduce license application fees to 75% or less of the national average for equivalent or comparable occupations. In response, the Board reviewed the 2018 member profiles maintained by the National Council of State Boards of Nursing, which reports comprehensive, detailed fee information from responding boards of nursing. The profile revealed that the Board's current endorsement licensure fee is at 81% of the national fee average. The adopted amendments are necessary to reduce the Board's current endorsement fee from $161 to $125 in order to meet the Office of the Governor's request and maintain legislative budget requirements.

How the Section Will Function. Adopted §223.1(a)(2) sets the endorsement licensure fee at $125.

Public Comment. The public comment period closed on January 18, 2021. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151 and §301.155.

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 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

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 26, 2021.

TRD-202100369
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Effective date: February 15, 2021
Proposal publication date: December 18, 2020
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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 40. EPINEPHRINE AUTO-INJECTOR AND ANAPHYLAXIS POLICIES

## SUBCHAPTER D. MAINTENANCE AND ADMINISTRATION OF ASTHMA MEDICATION

### 25 TAC §§40.41 - 40.49

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §§40.41 - 40.49, concerning Maintenance and Administration of Asthma Medication. New §§40.44 - 40.47 are adopted with changes to the proposed text as published in the October 16, 2020, issue of the *Texas Register* (45 TexReg 7387) and will be republished. New §§40.41 - 40.43, 40.48, and 40.49 are adopted without changes to the proposed text as published in the October 16, 2020, issue of the *Texas Register* (45 TexReg 7387), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The new rules implement House Bill (H.B.) 2243, 86th Legislature, Regular Session, 2019, which amended Texas Education Code, Chapter 38 Subchapter E. H.B. 2243 allows school districts, open-enrollment charter schools, and private schools to develop a policy to stock and administer asthma medication to a student if the student is reasonably believed to be experiencing a symptom of asthma; the school nurse has written authorization from a parent or guardian of the student stating that the school nurse may administer prescription asthma medication to the student; and the student has been diagnosed as having asthma.

DSHS convened the Stock Epinephrine Advisory Committee (SEAC) to request recommendations on how to integrate evidence-based practices in the rules while allowing flexibility for the school districts and schools. The SEAC recommended to

stock at least two doses of medication, the type of medication, the inclusion of the equipment to have on hand to administer the medication, and to report the administration of asthma medication to the DSHS Commissioner within 10 business days after administration of the medication. The new rules allow flexibility so that schools may develop policies specific to each campus, including campus geography and student population size.

COMMENTS

The 31-day comment period ended November 16, 2020.

During this period, DSHS received comments regarding the proposed rules from 10 commenters, including the Texas Nurses Association, the Texas Nurse Practitioners, the Texas School Nurses Organization, the Asthma 411 Consortium, the Texas Association of School Boards, Amerigroup, and 4 individuals. A summary of comments relating to the rules and DSHS's responses follows.

Comment: One commenter supported the rules.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: One commenter did not support the rules. The commenter wanted parents to bring the child's prescribed inhaler to school.

Response: No changes were made in response to the comment. The rules implement H.B. 2243.

Comment: One commenter did not agree with the rules. The commenter did not want someone giving their child medication at the person's discretion. The commenter stated that not all schools have nurses, and non-licensed personnel may make decisions to medicate children without the knowledge of safe practice. The commenter stated that schools are moving away from teaching because the schools are focused on clothes, food, medicine, social work, and more.

Response: No changes were made in response to the comment. The rules implement H.B. 2243.

Comment: One commenter suggested having a physician's statement from the student's medical provider on file of an asthma diagnosis for the student.

Response: No changes were made in response to the comment. H.B. 2243 requires written notification from a parent or guardian of the student that the student has been diagnosed as having asthma and that the school nurse may administer prescription asthma medicine to the student.

Comment: One commenter asked if peak flow zone parameters will be utilized and which medical provider provides the standing order for the parameters.

Response: No changes were made in response to the comment. The peak flow zone parameters are addressed in the standing order.

Comment: One commenter asked if spacer usage for metered dose inhalers was considered and the cost of each inhaler.

Response: No changes were made in response to the comment. Adoption of an unassigned asthma medication policy is voluntary. If a school chooses to adopt a policy, they may utilize free or reduced cost asthma medication programs, if available.

Comment: Regarding §40.44(a)(2), one commenter suggested changing "must purchase" to "may purchase." The commenter stated that in Texas Education Code, §38.208, purchasing unassigned asthma medication is permissive and not mandatory. The commenter stated that while the statute authorizes DSHS to regulate the amount of medication available at campuses, it does not mandate that campuses purchase minimum dosages.

Response: DSHS agrees and changes the language in §40.44(a)(2) to "must secure or obtain."

Comment: Regarding §40.44, one commenter appreciated the language "campuses must purchase or obtain" as the suggested minimum dosage of unassigned asthma medication.

Response: No change was made response to this comment, but DSHS changed the language in §40.44(a)(2) to state "must secure or obtain" in response to another comment.

Comment: Regarding §40.44(a)(2), one commenter stated that "subject to the availability of funding" does not match the language of the statute, which prohibits a district's policy from requiring purchases that would result in a negative fiscal impact on the district. As proposed, the rules might require the district to make minimum purchases of asthma medication that would result in a negative impact to the district because funds are technically available. The commenter recommended that the proposed rules reflect the statute in language and intent.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The adoption of an asthma medication policy by a school district, open-enrollment charter school, or private school is voluntary in accordance with H.B. 2243. Campuses subject to a policy will need to obtain the minimum suggested dosage of asthma medication.

Comment: Regarding a campus or district policy, one commenter stated that §40.44(a)(2) and (b) and §40.45(a) reference campus adoption of policy. However, Texas Education Code §38.208 and §40.44(a) reference a school district. The commenter stated that school district policies are adopted by the board of trustees and not school campuses. The commenter requested the removal of references to campus adoption of policy and clarify application of the rules to districts and campuses.

Response: DSHS agrees with the comment and deletes references to campus adoption of policy and includes the school district, open-enrollment charter school, or private school in §40.44(a)(2) and (b) and §40.45(a). DSHS also deletes references to district policy in §40.45(d) and (e) and adds school district, open-enrollment charter school, or private school for clarity and consistency.

Comment: Regarding §40.44(c)(1), one commenter acknowledged that the requirement for a parent-reported asthma diagnosis is language included in H.B. 2243 and cannot be altered through the rulemaking process. The commenter suggested ongoing dialogue among stakeholders and recommended that administration of asthma medication by a school nurse be permitted "based on a medical history of asthma and/or a clinical presentation with signs and symptoms of asthma, which may include respiratory distress, dyspnea, or labored breathing, audible wheezing, tightness of chest, and persistent coughing."

Response: No changes were made in response to the comment. The rules implement H.B. 2243.

Comment: Regarding §40.44(c)(2), one commenter stated that the statute does not require or authorize the designation of a "campus department." The commenter recommended changing

the language to either district or campus departments to manage policy implementation.

Response: DSHS agrees that implementation will be at the campus level. DSHS changes the language in §40.44(c)(2) to "campus administrator."

Comment: Regarding §40.44(c)(2), one commenter recommended replacing "designated campus department" with "campus guidelines." The commenter stated that the statute does not require or authorize the designation of "campus department" and "campus department" is not terminology used in the Texas Education Code.

Response: DSHS agrees that implementation will be at the campus level. DSHS changes the language in §40.44(c)(2) to "campus administrator."

Comment: Regarding §40.44(c), one commenter stated that this section should require administrative guidelines to address whether the campus will conduct assessments. The commenter stated that according to §40.44(b), campuses may consider performing assessments. However, §40.44(c), requires the designated campus department to conduct an assessment as part of the coordination and management of the policy. The requirement to conduct an assessment falls outside the scope of the Texas Education Code.

Response: DSHS agrees and changes the language in §40.44(c)(2)(A) to "whether to conduct a review at the campus to determine the need for additional doses." DSHS also changes "assessment" to "review" at §40.44(b) and §40.45(b)(2).

Comment: Regarding §40.44(c), one commenter stated that this section includes details that are not board-level decisions, will differ for each campus within the district, and are likely to change frequently. The commenter stated that incorporating the details for all campuses in board policy will result in lengthy and unusable board policy. The commenter requested that the rules provide that each campus develop and plan for implementing the authorizing board-level policy.

Response: DSHS changes the language in §40.44(c) to campus "administrator," as the campus will implement the school district, open-enrollment charter school, and private school adopted policy.

Comment: Regarding §40.44(c)(2)(B), one commenter stated that flexibility to tailor training to local needs is critical. The commenter stated that they appreciate an opportunity to participate in a collaborative initiative to develop adaptable training tools to implement the legislation.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: Regarding §40.44(c)(5), three commenters recommended changing "physician" to "authorized healthcare provider," as advanced practice nurse practitioners can prescribe unassigned epinephrine auto-injectors.

Response: DSHS agrees and makes the suggested change to §40.44(c)(5).

Comment: Regarding §40.44(d), one commenter suggested deleting this section, as it may confuse districts on their obligations to provide specific notice. The commenter stated that §40.48 requires that the district provide written notice of the unassigned asthma policy to a parent or guardian of each student enrolled in the district. School district policies and administrative regulations are publicly available under the Texas Public Information Act. The commenter stated that this section may lead to confusion.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The language allows flexibility in notifying parents and the public.

Comment: Regarding §40.45, one commenter stated that "subject to the availability of funding" does not match the language of the statute, which prohibits a district's policy from requiring purchases that would result in a negative fiscal impact on the district. As proposed, the rules might require the district to make minimum purchases of asthma medication that would result in a negative impact to the district because funds are technically available. The commenter recommended the proposed rules reflect the statute in language and intent.

Response: DSHS disagrees and declines to revise the rule in response to this comment. The adoption of an asthma medication policy is voluntary in accordance with H.B. 2243. Campuses subject to a policy will need to obtain the minimum suggested dosage of asthma medication.

Comment: Regarding §40.45(b)(2), one commenter stated that the proposed rule regarding the determination of additional doses is unclear. The commenter suggested clarifying the language as to what procedures districts must use before obtaining additional dosages.

Response: DSHS disagrees and declines to revise the rule in response to this comment. Per §40.45(b)(2), a campus may conduct a review to determine if additional doses are needed.

Comment: Regarding §40.45(e), one commenter appreciated the language.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: One commenter asked about the disposal protocol and if all items will be single dose (inhalers) and/or single use/disposable nebulizer accessories.

Response: No changes were made in response to the comment. Per §40.45(e), expired and used medication and supplies must be disposed of in accordance with the manufacturer's guidelines and local policy of the school district, open-enrollment charter school or private school. Schools have the discretion to use single dose inhaler or single use/disposable nebulizer accessories, and that will be written in the school's standing order.

Comment: Regarding §40.46(a)(3), three commenters recommended changing "physician" to "authorized healthcare provider," as advanced practice nurse practitioners can prescribe unassigned epinephrine auto-injectors.

Response: DSHS agrees and makes the suggested change to §40.46(a)(3). DSHS removes "or prescribing" from §40.46(a)(2) and adds "authorized" to §40.47(b) for clarity and consistency.

Comment: Regarding §40.47, one commenter supports the reporting of unassigned asthma medication to the students' primary care physician. However, the commenter recognized that there are barriers to communication between schools and clinicians. The commenter recommended state level initiatives, such as the Texas Asthma Control Collaboration and the Texas Asthma Affinity Group, be considered as a resource to further develop best practices.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: Regarding §40.47, one commenter stated that they support the reporting of unassigned asthma medication to DSHS. The commenter recognized that privacy protections are critical to data use. The commenter recommended state-level initiatives, such as the Texas Asthma Control Collaboration and the Texas Asthma Affinity Group, be engaged in developing data resources to support evidence-based pediatric asthma initiatives.

Response: No changes were made in response to the comment. DSHS appreciates the comment.

Comment: One commenter asked about the specific time frame and method of reporting to the child's parent and treating physician of the administration of unassigned asthma medication.

Response: No changes were made in response to the comment. Per §40.47, the campus must submit a report to the student's primary healthcare provider no later than the 10th business day after the date a school nurse administers asthma medication. Parents must be notified per the campus's medication policy.

Comment: Regarding §40.49, one commenter appreciated the protections found in H.B. 2243, but have some confusion related to the language in statute regarding supervision and delegation of asthma medication. The commenter noted that supervision and delegation are not included in the previous language. The commenter stated that the scope of Texas Education Code, §38.308(b-1) appears to limit the administration of asthma medication to the school nurse only. The commenter recommended including a statement in the rules to provide clarity.

Response: No changes were made in response to the comment. H.B. 2243 authorizes the school nurse to administer asthma medication and does not explicitly authorize the school nurse to delegate the administration of asthma medication.

Comment: One commenter asked if the proposal will include language regarding instances where the child has their prescribed medication in stock at schools and clarify that there is an option to do so. In those instances, will there be guidance on the specific medication utilized instead of the unassigned medication.

Response: No changes were made in response to the comment. The purpose of the rules for adoption is to implement H.B. 2243, which addresses unassigned asthma medication.

Comment: One commenter asked what section of the Texas Education Code provides coverage for the school nurse to administer an unassigned asthma medication.

Response: No changes were made in response to the comment. Texas Education Code, §38.215(a), addresses immunity from liability.

Comment: One commenter asked about the frequency of reviewing and auditing school policies.

Response: No changes were made in response to the comment. School districts, open-enrollment charter schools, and private schools should follow their normal review and revision schedules.

STATUTORY AUTHORITY

The new sections are authorized by Texas Education Code, Chapter 38, Subchapter E, which authorizes the Executive Commissioner of HHSC to adopt rules regarding the maintenance and administration of asthma medication in school districts, open-enrollment charter schools, and private schools, in consultation with the commissioner of education and with advice from the SEAC, as appropriate. The new sections are also authorized by Texas Government Code §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

*§40.44. Voluntary Unassigned Asthma Medication Policies.*

(a) A school district, open-enrollment charter school, or private school may voluntarily adopt and implement a written policy regarding the maintenance, administration, and disposal of asthma medication at each campus.

(1) If a written policy is adopted under this subchapter, the unassigned asthma medication policy must comply with Texas Education Code §38.208.

(2) Subject to the availability of funding, a school district, open-enrollment charter school, or private school that adopts such a policy must secure or obtain the suggested minimum dosage of unassigned asthma medication.

(b) In development of an unassigned asthma medication policy, a school district, open-enrollment charter school, or private school may consider performing a review to include:

(1) consultation with school nurses, the local school health advisory committee, local healthcare providers, or any department or organization involved with student well-being;

(2) campus geography; and

(3) student population size.

(c) If a school district, open-enrollment charter school, or private school voluntarily adopts an unassigned asthma medication policy, the policy must include:

(1) a process to obtain written authorization from a parent or guardian of the student that the student has been diagnosed as having asthma and stating that the school nurse may administer unassigned asthma medication to the student;

(2) a designated campus administrator to coordinate and manage policy implementation that includes:

(A) whether to conduct a review at the campus to determine the need for additional doses;

(B) training of school nurses;

(C) acquiring or purchasing, maintaining, storing, and using unassigned asthma medication, subject to available campus funding; and

(D) disposing of expired unassigned asthma medication;

(3) a list of school nurses who will be assigned to administer unassigned asthma medication;

(4) locations of unassigned asthma medication;

(5) procedures for notifying a parent, prescribing authorized healthcare provider, and the student's primary healthcare provider when unassigned asthma medication is administered; and

(6) a plan to replace, as soon as reasonably possible, any unassigned asthma medication that is used or close to expiration.

(d) An adopted unassigned asthma medication policy must be publicly available.

*§40.45. Prescription, Administration, and Disposal of Unassigned Asthma Medications.*

(a) Once a school district, open-enrollment charter school, or private school voluntarily adopts an unassigned asthma medication policy, a campus that implements an unassigned asthma medication policy must stock unassigned asthma medication, subject to available funding, as defined by §40.44 of this subchapter (relating to Voluntary Unassigned Asthma Medication Policies).

(b) A campus must obtain a prescription from an authorized healthcare provider each year to stock, possess, and maintain at least two doses of unassigned asthma medication on each campus as described in Texas Education Code §38.208 and any equipment necessary to administer the medication.

(1) The campus must renew this prescription or obtain a new prescription annually.

(2) The number of additional doses may be determined by an individual campus review led by an authorized healthcare provider.

(c) An authorized healthcare provider who prescribes unassigned asthma medication under subsection (b) of this section must provide the campus with a standing order for the administration of unassigned asthma medication to a person who:

(1) is reasonably believed to be experiencing a symptom of asthma; and

(2) has provided written notification and permission as required by the unassigned asthma medication policy.

(d) The unassigned asthma medication must be stored in accordance with the manufacturer's guidelines and local policy of the school district, open-enrollment charter school, or private school.

(e) Expired unassigned asthma medication and other used or expired supplies must be disposed of in accordance with the manufacturer's guidelines and local policy of the school district, open-enrollment charter school or private school.

*§40.46. Training.*

(a) A school district, open-enrollment charter school, or private school that chooses to adopt a written unassigned asthma medication policy, or a campus that is subject to this subchapter, is responsible for training school nurses about:

(1) the adopted unassigned asthma medication policy;

(2) the authorized healthcare provider's standing order;

(3) follow-up with the prescribing authorized healthcare provider and the student's primary healthcare provider; and

(4) the report required after administering an unassigned asthma medication under §40.47 of this subchapter (relating to Report on Administering Unassigned Asthma Medication).

(b) Each campus must maintain training records and must make available upon request a list of school nurses trained and authorized to administer the unassigned asthma medication on the campus.

*§40.47. Report on Administering Unassigned Asthma Medication.*

(a) Records relating to implementing and administering the school district, open-enrollment charter school, or private school's unassigned asthma medication policy must be retained per the campus record retention schedule.

(b) The campus must submit a report no later than the 10th business day after the date a school nurse administers asthma medication in accordance with the unassigned asthma medication policy adopted under this subchapter. The report must be included in the student's permanent record and submitted to the school administrator, prescribing authorized healthcare provider, the student's primary healthcare provider, and to the Department of State Health Services (DSHS) Commissioner.

(c) Notifications to the DSHS Commissioner must be submitted on the designated electronic form available on DSHS's School Health Program website found at dshs.texas.gov.

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 29, 2021.

TRD-202100415
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: February 18, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 776-7279

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# TITLE 28. INSURANCE

## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

### CHAPTER 142. DISPUTE RESOLUTION--BENEFIT CONTESTED CASE HEARING

**28 TAC §142.13, §142.19**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) adopts amendments to 28 TAC §142.13, concerning Discovery, and §142.19, concerning Form Interrogatories, to update the interrogatories to increase the time to respond to the interrogatories and to describe the questions that a party may ask using the interrogatories. The amendments are adopted without changes to the proposed text published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9165) and will not be republished.

REASONED JUSTIFICATION. Texas Labor Code §410.159 requires that the commissioner of workers' compensation prescribe standard form interrogatories for parties to use in a contested case proceeding before DWC. Under §142.13(b) - (d), interrogatories may be presented after the required exchange of documentary evidence, which is to take place no later than 15 days after a benefit review conference, and no later than 20 days before a contested case hearing, unless otherwise agreed. In these amendments, DWC increases the time to respond to an interrogatory from five days to 10. To accommodate the additional five days to respond within the allotted time for a contested case, interrogatories would now be required to be presented no later than 25 days before a hearing, unless the parties agree otherwise.

DWC amends §142.13(d) to set out the rule text in paragraphs and to make other editorial changes to conform the section to

DWC's current style and to improve the rule's clarity. Paragraph (1) is amended to clarify that the interrogatories may be used by all parties, including subclaimants. Section 140.1(3) defines a "party to a proceeding" as "a person entitled to take part in a proceeding because of a direct legal interest in the outcome." Section 140.6(b) states that "a subclaimant as described in [Labor Code] §409.009 [relating to Subclaims] is a party to a claim concerning workers' compensation benefits." Paragraph (2) is amended to require that interrogatories must be presented no later than 25 days before a hearing, rather than 20 days. Paragraph (3) is amended to increase the time to respond to interrogatories from five days to 10. The amendments will go into effect 20 days from filing with the *Texas Register,* and the allowance for 10 days for a response will apply to interrogatories sent after the amendments have gone into effect.

DWC amends §142.19 to describe in new subsection (a) the information that may be sought through interrogatories. That information includes the name and contact information of the person answering the interrogatories; the issues in dispute; any certification of maximum medical improvement and impairment rating; any statement obtained from any person on the issues in dispute; the name and contact information for each health care provider the claimant has seen since the date of injury; the conditions the health care provider treated; and any recordings, photographs, videotapes, or similar material showing the claimant since the date of injury. In addition, for each health care provider the claimant has seen during the five years before the date of injury for treatment of a body part the claimant believes to be part of the claim, a party may request the health care provider's name and contact information, the dates the health care provider treated the claimant, and the conditions the health care provider treated. For each expert witness expected to testify, a party may be asked to provide the expert witness' name and contact information, the subject matter the expert witness may or will testify on, the general substance of the expert witness' opinions, and a brief summary of the basis for those opinions. Also, the interrogatories provide space for five additional questions that a party may use to get specific information relevant to an individual dispute.

Section 142.19 is also amended to add new subsection (b) to note that DWC will develop and make available standard form interrogatories in a form and manner consistent with this rule as required under Labor Code §410.159. The form interrogatories may be found at www.tdi.texas.gov/wc/documents/clainterrcar.pdf.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment in support of the proposal from the Office of Injured Employee Counsel.

Comment: The commenter requested that the form interrogatories include a definition for "certification of maximum medical improvement and impairment rating."

Agency Response: DWC appreciates the comment but disagrees on the need for these definitions. Definitions for both terms are provided under Labor Code §401.011. However, in response to this comment, DWC has added a reference to DWC Form-069, *Report of Medical Evaluation,* which is used to report a certification of maximum medical improvement and impairment rating.

Comment: The commenter also requested that the form interrogatory for claimants to send to insurance carriers include a question for the insurance carrier to state each ICD-10 Code or diagnosis accepted for a compensable injury.

Agency Response: DWC appreciates the comment but disagrees on the need for this question. This question would be overly specific and burdensome. If a claimant wishes to ask a question specific to their claim, they may use one of the blank spaces provided for additional questions. No change was made in response to this comment.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amended sections under Labor Code §§402.00128, 402.021, 402.061, 410.157, 410.158, and 410.159.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings; take testimony directly or by deposition or interrogatory; and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021(b)(8) describes the Legislature's intent that DWC "effectively educate and clearly inform each person who participates in the system ... of the person's rights and responsibilities under the system and how to appropriately interact within the system."

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement Labor Code, Title 5, Subtitle A.

Section 410.157 provides that the commissioner shall adopt rules governing procedures under which contested case hearings are conducted.

Section 410.158 provides for the scope of discovery in contested case hearings.

Section 410.159 requires the commissioner, by rule, to prescribe standard form sets of interrogatories to obtain information from claimants and insurance carriers.

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 29, 2021.

TRD-202100417
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Effective date: February 18, 2021
Proposal publication date: December 18, 2021
For further information, please call: (512) 804-4703

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