

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8443, concerning Reimbursement Methodology for School Health and Related Services (SHARS), and §355.8600, concerning Reimbursement Methodology for Ambulance Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to align the rule with current updated practices and reduce administrative burdens by modernizing the informal review process for cost reports.

SECTION-BY-SECTION SUMMARY

Proposed amendment to 355.8443(b) updates the cost report due date and method of submittal to be in a manner specified by HHSC.

Proposed amendment to 355.8443(e) updates language for clarity related to the cost reconciliation and settlement process.

Proposed amendment to 355.8443(i) removes the requirement for a request for an informal review to be submitted in writing, and replaces it with a requirement that the request for informal review must be received in a manner prescribed by HHSC and updates language to clarify requirements when requesting an informal review.

Proposed amendment to 355.8443(j) updates references for consistency in formatting.

Additional proposed amendments to §355.8443 include administrative updates for clarity and transparency throughout the rule and removes language related to requiring an informal review or extension request to be signed by an individual legally responsible for the requesting entity since that language is already included in §355.110.

Proposed amendment to 355.8600(a) updates the definition of governmental ambulance for clarity.

Proposed amendments to 355.8600(c) remove the written requirement for eligibility requests for supplemental payments and states eligibility requests must be submitted in the manner HHSC requires and updates the cost report due date and method of submittal to be in the manner specified by HHSC.

Additional proposed amendments to §355.8600 include administrative updates for clarity and transparency throughout the rule.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create new regulations;
- (6) the proposed rules will not expand, limit, or repeal existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and the rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rules.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance Department, has determined that for each year of the first five years the rules are in effect, the public benefit will be a reduced burden for contracted Medicaid providers related to the submission and processing of informal reviews and formal appeals.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed amendments decrease the requirements to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R030" in the subject line.

DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

1 TAC §355.8443

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §532.0051, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §532.0057(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code §§524.0151, 524.0005, 532.0051, and 532.0057(a). It also affects Texas Human Resources Code Chapter 32.

§355.8443. *Reimbursement Methodology for School Health and Related Services (SHARS).*

(a) Introduction. Reimbursement is available to a Local Education Agency (LEA) for providing certain direct medical and transportation services, known as SHARS, to a Medicaid-enrolled student with a disability age 20 years of age or younger. SHARS services are described in and must be prescribed in accordance with §354.1341 of this title (relating to Benefits and Limitations).

(b) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Cost report--~~A yearly~~ [An annual] report for all Medicaid-allowed ~~[documenting the LEA's Medicaid-allowable]~~ costs for all SHARS services provided by an LEA ~~[delivered]~~ during the previous federal fiscal year. The Texas Health and Human Services Commission (HHSC) sets the due date for the report, ~~[each report is due on or before April 1 of the year following the reporting period]~~ and it must be certified in the [a] manner specified by HHSC ~~[the Texas Health and Human Services Commission (HHSC)]~~. The ~~[primary purposes of the]~~ cost report should ~~[are to]~~:

(A) document the LEA's total Medicaid-allowable costs for delivering SHARS, including direct costs and indirect costs, based on federally mandated cost allocation methodologies; and

(B) reconcile interim payments to total Medicaid-allowable costs based on approved cost allocation methodology procedures.

(2) Eligible student--A Medicaid-enrolled student with a disability age 20 years of age or younger that receives a direct medical or transportation service as prescribed by §354.1341 of this title.

(3) Interim claim--A claim for a direct medical or transportation service paid at the interim rate that is provisional in nature pending the completion of a cost reconciliation and cost settlement for the cost reporting period.

(4) Local Education Agency (LEA)--A Texas independent school district or public charter school.

(5) Time study--A statistically valid random sampling method used to identify the percentage of time spent performing actual direct medical services irrespective of payer and administrative cost.

(c) Parental Consent. Prior to submitting its annual cost report, the LEA must meet the parental consent requirements in §354.1342 of this title (relating to Conditions for Participation) for each student included in the numerator of the following ratios required in the cost report.

(1) IEP ratio. ~~[--]~~A comparison of the total number of students enrolled in Medicaid with individualized education programs (IEPs) requiring direct medical services to the total number of students with IEPs requiring direct medical services.

(2) One-way trip ratio. ~~[--]~~A comparison of the total one-way trips for students enrolled in Medicaid with IEPs requiring specialized transportation services, who received direct medical services the same day, to the total one-way trips for all students with IEPs requiring specialized transportation services.

(3) Section 504 Plan ratio. ~~[--]~~A comparison of the total number of students enrolled in Medicaid with Section 504 Plans requiring audiology services to the total number of students with Section 504 Plans requiring audiology services.

(d) Time study. The LEA must participate in the HHSC-administered time study in the manner prescribed by HHSC.

(e) Reimbursement methodology. LEAs are reimbursed for direct medical and transportation services provided under the SHARS program on a cost basis.

(1) Interim rates. The interim rate is developed based on a percentage of the average per-unit cost for each SHARS service using actual cost data collected on cost reports and is subject to change under §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). Interim rates are updated annually or as determined by HHSC.

(2) Interim claims.

(A) LEAs must submit:

(i) at least one interim claim for each direct medical service that an eligible student receives within the cost report period;

(ii) interim claims for all personal care services that an eligible student receives within the cost report period; and

(iii) interim claims for all eligible specialized transportation trips provided within the cost report period.

(B) Requirements for interim claims will be adjusted as needed based on direction from the Centers for Medicare and Medicaid Services.

(C) Interim claims must be valid and reimbursed to meet the requirements in this paragraph.

(3) Interim payment. LEAs are reimbursed for SHARS direct medical services and transportation services per unit of service at the lesser of:

(A) the LEA's billed charges; or

(B) the interim rate.

(4) Final reimbursement. The amount an LEA receives after HHSC completes a cost reconciliation and cost settlement process. The total costs for direct medical and transportation services are reviewed and adjusted by HHSC. Adjustments are made using federally required allocation methods. [The LEA's final reimbursement amount is arrived at by a cost reconciliation and cost settlement process. As reported in the cost report, the LEA's total costs for both direct medical and transportation services are adjusted using the federally mandated allocation methodologies.]

(A) Direct medical services costs. Salary and contract costs must be reported in the manner prescribed by HHSC.

(i) Direct costs. From the annual cost report, HHSC aggregates allowable costs for direct medical services, resulting in total direct costs. Direct costs for direct medical services include payroll costs and other costs that can be directly charged to direct medical services provided by contractors and LEA staff (i.e., salaries, benefits, and contract compensation). Direct medical services costs do not include transportation personnel costs.

(ii) Indirect costs. Indirect costs are determined by applying the LEA's specific unrestricted indirect cost rate to its net direct costs. Texas LEAs use predetermined fixed rates for indirect costs. The Texas Education Agency (TEA) has, in cooperation with the United States Department of Education (USDE), developed an indirect cost plan to be used by LEAs in Texas. As authorized in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for LEAs for the USDE, which is the cognizant agency for LEAs.

(iii) Net allowable cost. Direct and indirect costs are added together and adjusted by the direct medical time study percent-

age, the IEP ratio, and the 504 Plan ratio, resulting in a net Medicaid allowable cost for direct medical services.

(B) Transportation services. Salary and contract costs must be reported in the manner prescribed by HHSC.

(i) Direct costs. From the annual cost report, HHSC aggregates allowable direct costs for transportation, resulting in total direct costs. Direct costs for covered transportation services include payroll costs and other costs that can be directly charged to covered transportation services. Direct payroll costs include total compensation (i.e., salaries, benefits, and contract compensation) of bus drivers and mechanics. Other direct costs include costs directly related to the delivery of covered transportation services, such as professional and contracted services, contracted transportation costs, gasoline and other fuels, other maintenance and repair costs, vehicle insurance, interest, rentals, and vehicle depreciation.

(ii) Indirect costs. Indirect costs are determined by applying the LEA's specific unrestricted indirect cost rate to its net direct costs. Texas public LEAs use predetermined fixed rates for indirect costs. TEA has, in cooperation with the USDE, developed an indirect cost plan to be used by LEAs in Texas. As authorized in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for LEAs for the USDE, which is the cognizant agency for LEAs.

(iii) Net allowable cost. Net direct costs and indirect costs are added together and adjusted by the one-way trip ratio, resulting in a net Medicaid allowable cost for transportation services.

(f) Cost reporting requirements. HHSC excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by LEAs.

(1) Certification. Each LEA certifies through the cost report process its total actual federal and non-federal costs and expenditures.

(2) Reimbursement determinations and allowable costs. LEAs are responsible for reporting only allowable costs on the cost report, except where HHSC prescribes that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. All costs relating to Shared Service Arrangements and Co-operatives must be allocated to each respective LEA.

(g) Cost reconciliation. The Medicaid-allowable costs for direct medical and transportation services are added together and adjusted by the federal Medicaid assistance percentage (FMAP) to arrive at the federal share owed to the LEA. This amount is then reconciled with interim payments already made to the LEA.

(h) Cost settlement. HHSC uses a cost settlement process as follows.

(1) HHSC retains one percent of the federal share of the total certified Medicaid allowable cost as an administrative fee to be used for Health and Human Services administrative activities, including compliance monitoring, technical assistance, and to establish and maintain an audit reserve fund.

(2) If an LEA's interim payments exceed 99 percent of the LEA's federal portion of the total certified Medicaid allowable costs, HHSC recoups the overpayment using one of these two methods:

(A) HHSC offsets all future claims payments from the LEA until the amount is recovered; or

(B) the LEA returns an amount equal to the amount owed.

(3) If 99 percent of the LEA's federal portion of the total certified Medicaid allowable costs exceeds the interim Medicaid payments, HHSC pays the difference to the LEA.

(4) HHSC issues a notice of settlement within 24 months of the end of the reporting period.

(i) Informal review. An LEA who disputes an action or decision [determination] under this chapter may request an informal review under §355.110 of this chapter [title] (relating to Informal Reviews and Formal Appeals). This section provides clarification unique to the SHARS program.

(1) HHSC Provider Finance must receive a [written] request for an informal review [in a manner prescribed by HHSC] no later than 30 calendar days after [from] the date on the notice [written notification] of [the] adjustments. The informal review request must be submitted in a manner prescribed by HHSC. If the 30th [calendar] day falls on [is] a weekend or a [day,] national or state holiday, the request is due on the next business day. [or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted.] HHSC Provider Finance may [will] extend this deadline if a [it receives a written] request for an [the] extension is received within the same 30-day period. [in a manner prescribed by HHSC, no later than 30 calendar days from the date of the written notice of adjustments.] If the extension is approved, the requester has 45 calendar days from the date on the original notice to submit the informal review request. [The extension gives the requester a total of 45 calendar days from the date of the written notice of adjustment to file a request for an informal review.] If the 45th [calendar] day falls on [is] a weekend or a [day,] national [holiday,] or state holiday, [then] the deadline moves to [45th day is considered] the next business day. [following the 45th calendar day.] Any [A] request for an informal review or an extension that arrives after the [is not received by the stated] deadline will not be accepted.

(2) An LEA must provide [must, with its request for an informal review, submit] a brief and complete [concise] statement of the [specific] actions or decisions [determinations] it is disputing. [disputes,] The LEA must also include its recommended resolution[,] and any relevant supporting documentation. [the LEA deems relevant to the dispute.] It is the LEA's responsibility [of the LEA] to provide [render] all important [pertinent] information at the time it requests [of its request for] an informal review. HHSC will only consider any disputed items that are clearly stated in the request. [Disputed actions or determinations that are not explicitly stated in the request will not be considered by HHSC, and failure of HHSC to act on implied items of dispute will not be considered grounds for a formal appeal.] Any [A] request for an informal review that does not meet these [the] requirements [of this paragraph] will not be accepted.

[(3) The written request for the informal review or extension must be signed by an individual legally responsible for the conduct of the LEA or a legal representative for the LEA. The administrator or director of the LEA is not authorized to sign the request unless the administrator or director has this legal authority. A request for an informal review that is not signed by an individual legally responsible for the conduct of the LEA or a legal representative for the LEA will not be accepted.]

(j) General information. In addition to the requirements of this section, the cost reporting guidelines will be governed by the information in: §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications

for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals) [of this chapter]. If there is a conflict between an applicable section of [Chapter 355,] Subchapter A of this chapter [title] (relating [related] to Cost Determination Process) and the provisions of this section, the provisions of this section will prevail.

(k) In addition to the requirements of this section, the LEA must comply with all provisions outlined in §354.1341 [of this title] and §354.1342 of this title.

(l) Administrative contract violations. HHSC may take the following actions against an LEA for administrative contract violations.

(1) Time study. For failure to participate in or meet all time study requirements, HHSC will recoup all interim payments made during the cost reporting period and will not allow the LEA to submit a cost report for that reporting period.

(2) Interim claims. The LEA is ineligible to submit a cost report if they fail to submit interim claims in the manner and format prescribed by HHSC, or its designee, including the requirements in subsection (e)(2) of this section. If a service category, student, employee, or related cost is claimed in the cost report without having been appropriately claimed in compliance with program requirements, that specific service category, student, employee, or related cost will be disallowed from the cost report.

(3) Cost reports.

(A) For failure to submit a cost report by the due date, HHSC will recoup all interim payments made during the cost reporting period.

(B) HHSC will remove all unallowable costs and reserve the right to update a certified cost report if inaccurate information is identified or reported by the LEA.

(4) Other administrative contract violations. For all other administrative contract violations, HHSC will recoup all interim payments made during the cost reporting period.

(5) Appeals. An LEA may request a hearing to appeal HHSC's action concerning an administrative contract violation. Formal appeals are conducted in accordance with the provisions of Chapter 357, Subchapter I of this title (relating to Hearings under the Administrative Procedure Act). If there is a conflict between an applicable section of Chapter 357 of this title (relating to Hearings) and the provisions of this chapter, the provisions of this chapter will prevail.

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

Filed with the Office of the Secretary of State on January 29, 2026.

TRD-202600363



DIVISION 31. AMBULANCE SERVICES

1 TAC §355.8600

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §532.0051, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §532.0057(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code §§524.0151, 524.0005, 532.0051, and 532.0057(a). It also affects Texas Human Resources Code Chapter 32.

§355.8600. *Reimbursement Methodology for Ambulance Services.*

(a) Authority. Payments are made to private and governmental providers of ground and air ambulance services as specified in the ambulance program rules in Chapter 354, Subchapter A, Division 9 of this title (relating to Ambulance Services). The reimbursement determination authority is specified in §355.101 of this chapter (relating to Introduction).

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.

(1) Allowable costs--Expenses that are reasonable and necessary for the normal conduct of operations relating to the provision of ground and air ambulance services.

(2) Average Commercial Rate--The average amount payable by commercial payers for the same service.

(3) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(4) Governmental ambulance provider--An ambulance service that uses paid government employees to provide ambulance services. These services must receive direct funding from a government body that has the power to collect taxes or access tax revenue. This type of provider can be a local government, hospital authority, hospital district, city, county, or the state. A private ambulance provider that has a contract with a government entity is not a governmental ambulance provider under this section.

{(4) Governmental ambulance provider--An ambulance provider that uses paid government employees to provide ambulance services. The ambulance services must be directly funded by a unit

of government that has taxing authority or has direct access to tax revenues, such as a local government, hospital authority, hospital district, city, county, or state. A private ambulance provider under contract with a governmental entity to provide ambulance services is not considered a governmental ambulance provider for the purposes of this section.}

(5) Medicaid shortfall--The unreimbursed cost to an ambulance provider of providing Medicaid ambulance services to Medicaid clients.

(6) Private ambulance provider--An ambulance provider that uses paid employees associated and financed through a private entity to provide ambulance services and may be under contract with a local, state, or federal government.

(7) Uncompensated care costs--The sum of the Medicaid shortfall and the uninsured costs.

(8) Uninsured costs--The unreimbursed cost to an ambulance provider of providing ambulance services that meet the definition of "medical assistance" in Social Security Act §1905(a) to uninsured patients as defined by CMS.

(9) Unit of service--A unit of service based on one or more allowable ambulance services provided to a client by all modes of approved transportation.

(c) Reimbursement methodologies.

(1) Fee-for-service ambulance fee. Fee-for-service reimbursement is based on the lesser of a provider's billed charges or the maximum fee established by the Texas Health and Human Services Commission (HHSC). HHSC establishes fees by reviewing the Medicare fee schedule and analyzing any other available ambulance-related data. Fee-for-service rates apply to both private and governmental ambulance providers.

(2) Supplemental payment and enhanced supplemental payment for governmental ambulance providers. For services provided through September 30, 2019, a governmental ambulance provider may be eligible to receive a supplemental payment in addition to the fee-for-service payment described in paragraph (1) of this subsection. For services provided beginning October 1, 2019, eligibility for governmental ambulance providers to receive a supplemental payment, and the methodology for calculating the payment amount, are described in §355.8210 of this subchapter (relating to Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care).

(A) Eligibility for supplemental payments. A governmental ambulance provider must submit an eligibility request in the manner specified by HHSC. [a written request for determination of eligibility for supplemental payment in a manner designated by HHSC.] The [If eligible, a governmental ambulance] provider may [begin to] claim uncompensated care costs for [related to] services provided on or after the first day of the month after the eligibility request is approved. [after the request for determination of eligibility is approved.] HHSC will only review eligibility [considers] requests [for determination of eligibility] from governmental ambulance providers [as] defined in subsection (b) of this section. HHSC will respond to every request and state whether the provider is eligible [all written requests for consideration, indicating the requestor's eligibility] to receive supplemental payments. An acceptable request must include:

- (i) an overview of the governmental agency;
- (ii) a complete organizational chart of the governmental agency;

(iii) a complete organizational chart of the ambulance department within the governmental agency providing ambulance services;

(iv) an identification of the specific geographic service area covered by the ambulance department, by ZIP code;

(v) copies of all job descriptions for staff types or job categories of staff who work for the ambulance department and an estimated percentage of time spent working for the ambulance department and other departments of the governmental agency;

(vi) a primary contact person for the governmental agency who can respond to questions about the ambulance department; and

(vii) a signed letter documenting the governmental ambulance provider's voluntary contribution of non-federal funds.

(B) Eligibility for enhanced supplemental payments. A governmental ambulance provider must submit an application for enhanced supplemental payments to HHSC using a form designated by HHSC that includes the cost and payment data for paid Medicaid and commercial claims for all procedure codes specified in the application. If HHSC approves the application, a governmental ambulance provider may begin to claim enhanced supplemental payments based on the average commercial rate related only to ground ambulance services reimbursed by Texas Medicaid on a fee-for-service basis, provided on or after the first day of the month after the application is approved. HHSC will respond to all applications, indicating approval or disapproval of the applicant's eligibility to receive enhanced supplemental payments. An acceptable application must include:

(i) proof of enrollment as a Medicaid provider in the State of Texas at the beginning of the current demonstration year as defined in §355.8210 of this subchapter;

(ii) a primary contact person for the government agency who can respond to questions about the ambulance department;

(iii) a statement from the provider expressing its intent to participate in the program; and

(iv) a cost report that includes the cost and payment data for paid Medicaid and commercial claims for all procedure codes specified by HHSC.

(C) Cost reports. Governmental ambulance providers that are eligible for supplemental or enhanced supplemental payments must submit an annual cost report for ground and air ambulance services delivered to Medicaid and, effective March 1, 2012, uninsured clients on a cost report form specified by HHSC. Providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the cost reporting period. Cost reports must be completed for a full year based on the federal fiscal year. HHSC may require newly eligible providers to submit a partial-year cost report for their first year of eligibility. The beginning date for the partial-year cost report is the provider's first day of eligibility for supplemental or enhanced supplemental payments, as determined by HHSC. The ending date of the partial-year cost report is the last day of the federal fiscal year that encompasses the cost report beginning date.

(i) Due date. The cost report is due on or before the date set by HHSC, and it [March 31 of the year following the cost reporting period ending date, September 30, and] must be certified in the [a] manner specified by HHSC. If the due date is [March 31 falls] on a federal or state holiday or a weekend, the report is due on the next business day. [the due date is the first business day after March 31.] A provider may request [in writing, by regular mail or special mail delivery,] an extension of up to 30 days. [after the due date to submit

a cost report.] HHSC will review [respond to] all extension requests and let the provider know if the request is approved. [written requests for extensions, indicating whether the extension is granted.] HHSC must receive the [a] request before the original due date; any request received after that date will be denied. [for extension before the cost report due date. A request for extension received after the due date is considered denied.] A provider that does not submit its cost report by the due date or by the approved extended due date is not eligible for supplemental or enhanced supplemental payments for that federal fiscal year. [A provider whose cost report is not received by the due date or the extended due date is ineligible for supplemental or enhanced supplemental payments for the federal fiscal year.]

(ii) Purpose. A cost report shows [documents] the provider's actual Medicaid-allowable [allowable Medicaid] and uncompensated care costs for delivering ambulance services under [in accordance with the applicable] state and federal regulations. The [Because the cost] report is used to determine supplemental and enhanced supplemental payments. Because of this, [payments,] a provider must submit a complete and acceptable cost report to qualify [be eligible] for these payments. [a supplemental or enhanced supplemental payment.]

(iii) Allocating allowable costs. A provider's total allowable reported costs for ambulance services are allocated to Medicaid and uninsured patients based on the ratio of charges for Medicaid and uninsured patients to the charges for all patients. Only allocable expenditures related to Medicaid, Medicaid managed care, and uncompensated care, as defined and approved in the Texas Healthcare Transformation and Quality Improvement 1115 Waiver Program (1115 Waiver), will be included for supplemental payment.

(D) Calculation of supplemental payments and enhanced supplemental payments.

(i) For services provided from October 1, 2011, through February 29, 2012, a governmental ambulance provider may be eligible to receive a supplemental payment. The supplemental payment equals the [equal to its] Medicaid shortfall for the cost reporting period multiplied by the Federal Medical Assistance Percentage [federal Medical assistance percentage] (FMAP) in effect during the cost reporting period.

(ii) For services provided on or after March 1, 2012, and subject to approval by CMS, a governmental ambulance provider may be eligible to receive a supplemental payment equal to its uncompensated care costs for the cost reporting period multiplied by the FMAP in effect during the cost reporting period.

(iii) Supplemental payments based on uncompensated care costs are limited by the maximum aggregate amount of the estimated uncompensated care costs for all eligible governmental ambulance providers as determined by §355.8201 of this chapter (relating to Waiver Payments to Hospitals for Uncompensated Care).

(iv) If the actual aggregate uncompensated care costs for all eligible governmental ambulance providers are [is] greater than the maximum aggregate amount of the estimated uncompensated care costs for all eligible governmental ambulance providers as described in clause (iii) of this subparagraph, then HHSC will reduce the supplemental payments for all participating governmental ambulance providers proportionately.

(v) The supplemental payment is contingent upon the governmental ambulance provider's certificate of public expenditures submitted with each cost report.

(vi) If the federal government disallows federal financial participation related to the receipt or use of supplemental pay-

ments under this section, HHSC will recoup an amount equal to the federal share of supplemental payments overpaid or disallowed.

(E) Enhanced supplemental payment.

(i) For ground services reimbursed on a fee-for-service basis provided on or after October 1, 2019, a governmental ambulance provider may be eligible to receive an enhanced supplemental payment equal to the difference between the average commercial rate and the sum of its reimbursed costs for the cost reporting period.

(I) HHSC will determine the paid Medicaid claims fees and enhanced supplemental payment amounts for all procedure codes specified in the application for each eligible publicly owned fee-for-service ground emergency ambulance service provider.

(II) HHSC will calculate an overall average commercial rate for the ambulance service providers based on the cost and payment data provided from each eligible ambulance provider.

(III) HHSC will apply the overall average commercial rate to an ambulance provider's total Medicaid utilization to determine the ambulance provider's total commercial reimbursement.

(IV) HHSC will subtract the ambulance provider's total Medicaid reimbursement from the ambulance provider's total commercial reimbursement calculated for each of the eligible services.

(V) HHSC will calculate each ambulance provider's maximum payment limit by summing each of the differences calculated in subclause (IV) of this clause for each of the provider's eligible services.

(VI) HHSC will re-determine the average commercial rate at least annually.

(VII) The enhanced supplemental payment is contingent upon the governmental ambulance provider's data submitted with each cost report. HHSC will determine payment amounts on a quarterly basis, with a reimbursement of up to 100 percent for each ambulance provider's average commercial rate.

(ii) If CMS disallows federal financial participation related to a provider's receipt or use of enhanced supplemental payments under this section, HHSC will recoup from the provider an amount equal to the disallowance. If HHSC identifies an overpayment to a provider related to the receipt or use of enhanced supplemental payments under this section, HHSC will recoup from the provider an amount equal to the overpayment.

(d) General information. In addition to the requirements of this section, cost reporting guidelines are governed by: §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals). If conflicts arise between this section and other sections governing cost reporting, the provisions of this section prevail.

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

Filed with the Office of the Secretary of State on January 29, 2026.

TRD-202600364

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 15, 2026

For further information, please call: (512) 730-7475



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §§121.1 - 121.10, 121.14

The Office of the Governor ("OOG") proposes amendments to 13 TAC §121.1, concerning Background and Purpose, §121.2, concerning Definitions, §121.3, concerning Eligible Projects, §121.4, concerning Ineligible Projects, §121.5, concerning Eligible and Ineligible In-State Spending, §121.6, concerning Grant Awards, §121.7, concerning Additional Grant Awards, §121.8, concerning Grant Application, §121.9, concerning Processing and Review of Applications, §121.10, concerning Disqualification of an Application, and §121.14, concerning Revocation and Recapture of Incentives. The OOG also proposes the repeal of §121.13, concerning Texas Heritage Project, elsewhere in this issue. The proposed amendments will make changes to better carry out the purpose of the program, respond to the evolving landscape of the industry in Texas, and improve readability and clarity.

EXPLANATION OF PROPOSED AMENDMENTS

The Texas Moving Image Industry Incentive Program ("TMIIP") was implemented to increase employment opportunities for Texas industry professionals, encourage tourism to the state, and boost economic activity in Texas cities and the overall Texas economy. The 89th Legislature passed Senate Bill 22, which created the Texas Moving Image Industry Incentive Fund appropriating the Texas Moving Image Industry Incentive Program \$300M each biennium until 2035. The new legislation also changed the residency threshold requirement for crew, actors, and extras from this state from 55% to 35% for the period of September 1, 2025, through August 31, 2027, to be increased by 5% each subsequent biennium until reaching 50% beginning on September 1, 2031. In addition, content requirements and additional grant awards were created for projects accepted into the program. The proposed amendments to §121.3 align the rule with section 485.023, Texas Government Code, as modified by the 89th Legislature. This rulemaking incorporates most of the changes made by Senate Bill 22, clarifies existing language, and makes other non-substantive updates for style and grammar.

The proposed amendments to §121.1 make non-substantive updates to style and grammar.

The proposed amendments to §121.2 add definitions related to changes made by Senate Bill 22, and modifies other definitions to better align them with the purpose of the program and to account for changes in the industry. The amendments also update outdated language and make non-substantive updates to style and grammar.

The proposed amendments to §121.3 clarify language related to activities that are eligible for TMIIP grants and require applicants to follow all requirements and best practices set forth in the Texas Film Commission Program Guidelines. The amendments further update outdated language and make non-substantive updates to style and grammar.

The proposed amendments to §121.4 make clarifying changes, align language with the OOG's current procedures, and insert non-substantive updates to style and grammar.

The proposed amendments to §121.5 clarify the lists of eligible and ineligible in-state expenditures under the program. The proposed amendments also make non-substantive updates to style and grammar.

The proposed amendments to §121.6 revise the potential grant amounts and corresponding budget tiers for all eligible projects in accordance with changes made by Senate Bill 22. The proposed amendments also make non-substantive updates to style and grammar.

The proposed amendments to §121.7 add new grant categories to the existing options for Applicants to receive one or more additional grants, to the extent the total grant amounts do not exceed 31% of the total in-state spending. The additional options relate to: (1) the Rural Filming Grant; (2) the Texas Historic Site Grant; and (3) the Workforce Development Grant. Consistent with section 485.025 of the Texas Government Code, as amended by Senate Bill 22, the rules establish that an Applicant may qualify for multiple options, but may not receive additional grants in amounts that exceed 31% of the total in-state expenditures for the project. Senate Bill 22 also created the Texas Heritage Grant and Faith-Based Moving Image Project Grant; those additional incentives will be addressed in a future rulemaking by the OOG. The proposed amendments also make non-substantive updates to style and grammar.

The proposed amendments to §121.8 make non-substantive updates to style and grammar.

The proposed amendments to §121.9 remove unnecessary, redundant language and make other non-substantive updates to style and grammar.

The proposed amendments to §121.10 make non-substantive updates to style and grammar.

The proposed amendments to §121.14 make non-substantive updates to style and grammar.

FISCAL NOTE

Stephanie Whallon, Director, Texas Film Commission, has determined that during each of the first five years in which the proposed amendments are in effect, there will be expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendments.

Ms. Whallon anticipates a positive fiscal impact to the local and state economy due to increased production as a result of the proposed amendments. There is also an anticipated impact to the state's return on investment (ROI) calculation, specifically

due to the lower residency requirements over the first five years. Any negative impact will decrease as the residency percentage requirements increase over time.

PUBLIC BENEFIT AND COSTS

Ms. Whallon has also determined that during each of the first five years in which the proposed amendments are in effect, the rule changes will yield the anticipated public benefit by lowering an eligibility requirement for a TMIIP grant in order to expand the number of qualifying projects, specifically at the small to mid-size budget range.

Ms. Whallon has determined there are no measurable anticipated economic costs to persons required to comply with the proposed amendments.

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

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Whallon has determined that during each of the first five years in which the proposed amendments are in effect, the amendments:

- 1) will not create or eliminate a government program;
- 2) will require the creation of new employee positions as approved by the legislature;
- 3) will not require an increase or decrease in future legislative appropriations to the OOG;
- 4) will not require an increase or decrease in fees paid to the OOG;
- 5) do not create a new regulation;
- 6) will expand certain existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- 8) will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

The OOG has determined that no private real property interests are affected by the proposed rules, and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the proposed amendments do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

SUBMISSION OF COMMENTS

Written comments regarding the proposed rule amendments may be submitted for 30 days following the date of publication of this notice by mail to Stephanie Whallon, Office of the Governor, Texas Film Commission, P.O. Box 12428, Austin, Texas 78711, or by email to TFCRules.Comments@gov.texas.gov with the subject line "TMIIP Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on March 15, 2026.

STATUTORY AUTHORITY

The amendments are proposed under Section 485.022 of the Texas Government Code, which requires the Texas Film Commission to develop procedures for the administration and calculation of grant awards under TMIIIP. The amendments are also proposed in accordance with Senate Bill 22, which took effect on September 1, 2025.

CROSS REFERENCE TO STATUTE

Chapter 485 of Texas Government Code. No other statutes, articles, or codes are affected by the proposed amendments.

§121.1. Background and Purpose.

(a) Background.

(1) The Texas Moving Image Industry Incentive Program administered by the Texas Film Commission (Commission) offers grants based upon eligible expenditures within the state by the Applicant, subject to this chapter [Chapter] and Chapter 485 of the Texas Government Code.

(2) Grants are available upon submission of all required documentation by the Applicant to the Commission, initial verification by the Commission, and a compliance review by the Office of the Governor. These grants are in addition to the sales tax exemptions described in sections [Sections] 151.318 and 151.3185 of the Texas Tax Code and §3.300 of Title 34 of the Texas Administrative Code.

(b) Purpose.

(1) The Texas Moving Image Industry Incentive Program increases employment opportunities for Texas industry professionals, encourages tourism to the state, and boosts economic activity in Texas cities and the overall Texas economy. Rather than being an exporter of talent, Texas attracts a wide range of projects from traditional film, television, and commercial productions, to technology-driven visual effects, animation, video games, and other digital interactive media productions.

(2) The Texas Moving Image Industry Incentive Program promotes the growth of the indigenous segments of media production, thereby encouraging Texas's talented workforce to stay in Texas and realize real professional growth in the industry. The program increases the value of the Texas workforce and the viability of the small businesses that rely on media production activity, increasing Texas's capacity to take on more production activity and increasing the state's competitive edge.

(3) The Texas Moving Image Industry Incentive Program is not intended for productions or projects that are permanently located in Texas, including, but not limited to, news productions, sports productions, and religious service productions.

§121.2. Definitions.

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

(1) Applicant--

(A) For Feature Films, Television Programs, Visual Effects Projects for Feature Films or Television Programs, Reality Television Projects or Educational or Instructional Videos: either the Production Company producing the project or the owner of the copyright.

(B) For Commercials or Visual Effects Projects for Commercials: the Production Company, advertising agency, or client; provided, however, that if an advertising agency or client applies as the Applicant, but a Production Company expends the funds in the state in connection with a project, then either a chain of downstream

payment from the Applicant to the Production Company or a production services agreement must be evidenced in connection with the submission of the Expended Budget.

(C) For Digital Interactive Media Productions: the Production Company, game or content developer, or game publisher.

(2) Business Day--A day other than Saturday, Sunday, or a Federal or State of Texas holiday.

(3) Cast--Actors paid by the Applicant to perform roles in Texas, including, but not limited to, featured actors, extras, stunt performers, voice-over talent, hosts, judges, announcers and roles or performers that appear on a recurring basis, but excluding talk show guests, game or contest show contestants, and litigants and witnesses in courtroom reality programs.

(4) Commercial--A live-action or animated-production advertisement, including, but not limited to, an individual advertisement, more than one advertisement created in a contiguous production period for the same client, a music video, or an infomercial that is made for the purpose of promoting a product, service, or idea and is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, cable, satellite, Internet, or mobile electronic device.

(5) Crew--Independent contractors or employees paid by the Applicant to perform work in Texas that are directly contracted and credited for a specific position. An individual may work in more than one position on a production. Executive producers and/or permanent salaried employees of an Applicant who are listed on call sheets or production reports but not paid Wages on the project other than producing services, shall not be counted in Crew calculations for Texas Residency purposes. Vendors serving a traditional Crew [erew] function and providing personal services, but who are paid as independent contractors rather than through payroll, shall be counted in Crew calculations for Texas Residency purposes and must provide a Declaration of Texas Residency Form.

(6) Declaration of Texas Residency Form--A document promulgated by the [Texas Film] Commission [(Commission)] to be utilized by Applicants to prove the residency status of each Texas Resident employee, contractor, Crew, or Cast member.

(7) Digital Interactive Media Production--Software that provides a user or users with a game to play or other interactive technology experience for the purpose of entertainment or education, including for military or medical simulation training, and which is created for a game console or platform, personal computer, handheld console, or mobile electronic device used by a business or consumer [solely for bona fide amusement purposes as outlined in Section 47.01 of the Texas Penal Code].

(8) Educational or Instructional Video--An individual live-action or animated production, or a contiguous series of more than one live-action or animated production created for the same client, that is produced for exhibition in an educational or instructional setting.

(9) Episodic Television Series--A Television Program consisting of multiple episodes of a single season.

(10) Expended Budget--The final verifying documentation and worksheets submitted by an Applicant to the Commission at the completion of a project that shows the total eligible in-state spending, as defined in section [Section] 485.021(1), [of the] Texas Government Code, and includes all documentation considered by the Commission to be necessary to show compliance with the requirements of the Texas Moving Image Industry Incentive Program.

(11) Feature Film--Any live-action or animated for-profit production, including narrative and documentary productions, that is

produced for distribution in theaters or via any digital format, including, but not limited to, DVD, Internet, or mobile electronic device.

(12) Filming Day--A day of Production [as defined in paragraph (48) of this section]. When calculating 60% of Filming Days for purposes of §121.3 of this chapter (related to Eligible Projects) [Chapter], but not for purposes of calculating a percentage [25%] of Filming Days for purposes of §121.7 of this chapter (related to Additional Grant Award) [Chapter], a Filming Day may include a traditional day of Production in live-action or digital media, as well as a concurrent day of Production conducted by a second unit, so long as:

(A) such second unit, is not a splinter unit, but is utilized for a bona fide, production-related purpose and would be recognized by the Directors Guild of America as a second unit; and

(B) a call sheet, and production report, for such day is circulated and executed in connection with the activities of such second unit. Any bona fide, second unit day shall be added to both the numerator of Texas days and the denominator of total days for purposes of calculating 60% of Filming Days for purposes of §121.3 of this chapter. [Chapter.]

(13) Man Hours--A unit of one hour's work by one person.

(14) Physical Production--The period encompassing Pre-Production, Production, and Postproduction.

(15) Postproduction--The period that occurs after the end of Production, including but not limited to, animation, bug-fixing, codebase completion, compositing, editing, lighting, music, patch-creation, sound, testing, and visual effects.

(16) Pre-Production--The period that occurs before the start of Production, including, but not limited to, casting actors, estimating budgets, mechanics, scouting locations, and testing story.

(17) Principal Start Date--

(A) For a live-action Feature Film, Television Program, Reality Television Project, Educational or Instructional Video, or Commercial project: the first day of principal photography.

(B) For a Digital Interactive Media Production, Visual Effects Project or animated project: the first day of asset creation (i.e., character or environment modeling and/or rigging).

(18) Production--

(A) For a live-action Feature Film, Television Program, Reality Television Project, Educational or Instructional Video or Commercial project: the period starting the first day of principal photography through the last day of principal photography.

(B) For a Digital Interactive Media Production, Visual Effects Project or animated project: the period starting the first day of asset creation or commencement of layout (i.e., character or environment modeling and/or rigging) through the last day of animation, code freeze, and/or final layout.

(19) Production Company--A company that engages in any of the activities included in Physical Production for a Feature Film, Television Program, Reality Television Project, Educational or Instructional Video, Commercial project, or Digital Interactive Media Production.

(20) Proof of payment--Documentation that supports the disbursement and verifiably reflects the transmission, transfer, and payment of funds related to an eligible paid expenditure. Verifiable source documentation is represented by, but not limited to, a copy of a cleared/canceled check, credit card receipt, a bank statement,

EFT/ACH report or any third-party verifiable check inquiry report showing the cleared check.

(21) [(20)] Reality Series--A Reality Television Project consisting of multiple episodes of a single season.

(22) [(21)] Reality Television Project--A live-action, for-profit production based upon unscripted content, including, but not limited to, a Reality Series, a contest or game show (to include individual episodes), or a talk show (to include individual episodes), that is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, satellite, Internet, or mobile electronic device.

(23) Rural Filming Area--A county with a population with a population of 300,000 or less in which a moving image project is being filmed or has Man Hours completed.

(24) [(22)] Television Program--An episodic, live-action or animated for-profit production that is produced in a narrative or documentary style, including, but not limited to, a television series, miniseries, limited series, television movie, television pilot, television episode, or a musical performance that is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, satellite, Internet, or mobile electronic device (including a short narrative or documentary episode or series of episodes distributed initially as streamed content).

[(23)] Texas Heritage Project--A Feature Film or Television Program (excluding a Reality Television Project), that promotes or documents Texas's diverse cultural, historical, natural or man-made resources, and that meets the requirements established in §121.13 of this Chapter (relating to Texas Heritage Project).]

(25) Texas Domiciled Entity--A person conducting business in the state of Texas that operates a physical business location at a verifiable Texas address, other than a P.O. Box, that is registered to the entity.

(26) Texas Historic Site--A location used in the live-action filming of a Texas Moving Image Industry Incentive Program project that has received a Historic Designation by the Texas Historical Commission or is on the National Register of Historic Places as administered by the Texas Historical Commission in conjunction with the National Parks Service.

(27) Texas Institution of Higher Education--Has the meaning assigned by Section 61.003, Texas Education Code.

(28) [(24)] Texas Resident--An individual who is a permanent resident of Texas for at least 120 days prior to the Principal Start Date of the project and who has completed a Declaration of Texas Residency Form.

(29) [(25)] Underutilized and Economically Distressed Area--Has the meaning assigned to that term by Section 485.021, Texas Government Code.

[(A)] Underutilized Area--An area of the state that receives less than 15% of the total moving image industry production in the state during a fiscal year, as determined by the Commission. An area of the state wherein 15% or more of the total moving image industry production takes place during a fiscal year, as determined by the Commission, includes a thirty mile radius from city hall of that area's largest municipality.]

[(B)] Economically Distressed Area--An area within the thirty mile radius described in Subparagraph (A) of this paragraph, where the median household income does not exceed 75% of the me-

dian household income as determined by the Texas Demographic Center or its successor.]

(30) [(26)] Visual Effects Project--A self-contained production whereby computer generated images are created or manipulated to integrate with live-action footage of a Feature Film, Television Program, Educational or Instructional Video, or Commercial.

(31) [(27)] Wages--Compensation paid to an individual for work performed. Payment methods include, but are not limited to, direct payments, payments through an agent or agency, payments through a loan-out company or payments through a payroll service. Wages include, but are not limited to, gross wages, per diems (if signed for by the recipient), employer paid Social Security (Old Age, Survivors, and Disability Insurance (OASDI)) payments, employer paid Medicare (MEDI) payments, employer paid Federal Unemployment Insurance (FUI) payments, employer paid Texas State Unemployment Insurance (SUI) payments, employer paid pension, health and welfare payments, and employer paid vacation, [and] holiday pay, and sick leave. Only the first \$5,000,000 [\$1,000,000] in aggregate wages and/or compensation per person shall constitute eligible Wage expenditures.

§121.3. *Eligible Projects.*

(a) A project may be eligible for a grant under the Texas Moving Image Industry Incentive Program if it meets the stated minimum requirements listed in subsections [Subsections] (b) - (h) of this section [Section], is appropriate in content, and represents a potential economic impact in Texas, as assessed in §121.9(c)(3) of this chapter (related to Processing and Review of Applications) [Chapter], that is sufficient to justify acceptance in the program.

(b) Feature Films.

(1) Feature Film Applicants must expend a minimum of \$250,000 in in-state spending.

(2) Feature Film Applicants must demonstrate at least 60% of a project is filmed in Texas. The Applicant must fulfill this requirement by either:

(A) completing at least 60% of Filming Days in Texas;
or

(B) if the Texas Film Commission (Commission) provides prior written approval:

(i) completing at least 60% of the total project Man Hours in Texas; or

(ii) locating in Texas at least 60% of the actual locations used and paid for, not including basecamps.

(3) Except as provided in paragraph (4) of this subsection, a Feature Film Applicant must demonstrate it has met the required residency percentage specified in Section 485.023(2), Texas Government Code. The required percentages of the Crew paid by the Applicant and of the Cast, including extras, paid by the Applicant must be verified Texas Residents, unless the Commission certifies in writing that a sufficient number of qualified Crew and Cast, including extras, are not available; and the Applicant has made every effort to meet the requirements and follow best practices prescribed by the Texas Film Commission Program Guidelines to obtain Crew and Cast who are Texas Residents.

(4) For animated or documentary Feature Films, a Feature Film Applicant must demonstrate it has met the required residency percentage specified in Section 485.023(2), Texas Government Code. The percentage of the combined total of Crew and Cast, including extras, paid by the Applicant must be verified Texas Residents unless it the

Commission certifies in writing, that qualified Crew and Cast are not available; and the Applicant has made every effort to meet the requirements and follow best practices prescribed by the Texas Film Commission Program Guidelines to obtain Crew and Cast who are Texas Residents.

(c) Television Programs.

(1) Television Program Applicants must expend a minimum of \$250,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) locating in Texas at least 60% of the actual locations used and paid for, not including basecamps.

(3) Except as provided in paragraph (4) of this subsection, the percentage of the Crew paid by the Applicant and percentage of the Cast, including extras, paid by the Applicant must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirements and best practices as prescribed by the Texas Film Commission Program Guidelines. Applicants must demonstrate they meet residency requirements as outlined in subsection (b)(3) of this section.

(4) For animated or documentary Television Programs, applicants must demonstrate they meet the residency requirements as outlined in subsection (b)(3) of this section. The percentage combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available, and every effort has been made by the production to meet the requirements and best practices as prescribed by the Texas Film Commission Program Guidelines.

(d) Reality Television Projects.

(1) Reality Television Project Applicants must expend a minimum of \$250,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) locating in Texas at least 60% of the actual locations used and paid for, not including basecamps.

(3) Applicants must demonstrate that they meet the residency requirements outlined in subsection (b)(3) of this section. The percentage of the combined total of Crew and Cast, including extras, paid by the Applicant, must be Texas Residents, unless it is determined and certified by the Commission, in writing, that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirements and best practices as prescribed by the Texas Film Commission Program Guidelines..

(e) Commercials.

(1) Commercial Applicants must expend a minimum of \$100,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) locating in Texas at least 60% of the actual locations used and paid for, not including basecamps.

(3) Applicants must demonstrate the residency requirements as outlined in subsection (b)(3) of this section. The percentage of the combined total of Crew and Cast, including extras, paid by the Applicant must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirements and best practices as prescribed by the Texas Film Commission Program Guidelines.

(f) Digital Interactive Media Productions.

(1) Digital Interactive Media Production Applicants must expend a minimum of \$100,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) locating in Texas at least 60% of the actual locations used and paid for, not including basecamps.

(3) Applicants must demonstrate they meet the residency requirements as outlined in subsection (b)(3) of this section. The percentage of the combined total of Crew and Cast, including extras, paid by the Applicant must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirements and best practices as prescribed by the Texas Film Commission Program Guidelines.

(g) Educational or Instructional Videos.

(1) Educational or Instructional Video Applicants must expend a minimum of \$100,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) locating in Texas at least 60% of the actual locations used and paid for, not including basecamps.

(3) Applicants must demonstrate that they meet the residency requirements as outlined in subsection (b)(3) of this section. The percentage of the combined total of Crew and Cast, including extras, paid by the Applicant, must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirements and best practices as prescribed by the Texas Film Commission Program Guidelines.

(h) Visual Effects Projects.

(1) Visual Effect Project for a Feature Film or Television Program:

(A) Applicants must expend a minimum of \$250,000 in in-state spending.

(B) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(i) completing at least 60% of the total Man Hours in Texas; or

(ii) locating in Texas at least 60% of the actual locations used and paid for, not including basecamps.

(C) The Applicant must demonstrate they have met the residency requirements outlined in subsection (b)(3) of this section. The percentage of the Crew paid by the Applicant and percentage of the Cast, including extras, paid by the Applicant must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirements and best practices as prescribed by the Texas Film Commission Program Guidelines.

(2) Visual Effect Project for an Educational or Instruction Video or Commercial:

(A) Applicants must expend a minimum of \$100,000 in in-state spending.

(B) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(i) completing at least 60% of the total Man Hours in Texas; or

(ii) locating in Texas at least 60% of the actual locations used and paid for, not including basecamps.

(C) The Applicant must demonstrate that they have met the residency requirements outlined in subsection (b)(3) of this section. The percentage of the combined total of Crew and Cast, including extras, paid by the Applicant must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirements and best practices as prescribed by the Texas Film Commission Program Guidelines.

~~[(b) Feature Films.]~~

~~[(1) Feature Film Applicants must expend a minimum of \$250,000 in in-state spending.]~~

~~[(2) Applicants must film at least 60% of a project in Texas. Applicants must fulfill this requirement by:]~~

~~[(A) completing at least 60% of Filming Days in Texas; or]~~

~~[(B) if the Texas Film Commission (Commission) provides prior written approval:]~~

~~[(i) completing at least 60% of the total project Man Hours in Texas; or]~~

~~[(ii) having at least 60% of the actual locations used and paid for, not including basecamps, in Texas.]~~

~~[(3) Except as provided in paragraph (4) of this Subsection, 55% of the Crew paid by the Applicant and 55% of the Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient~~

number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.}]

[(4) For animated or documentary Feature Films, 55% of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.}]

[(e) Television Programs.}]

[(1) Television Program Applicants must expend a minimum of \$250,000 in in-state spending.}]

[(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:}]

[(A) completing at least 60% of the total Man Hours in Texas; or}]

[(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.}]

[(3) Except as provided in paragraph (4) of this Subsection, 55% of the Crew paid by the Applicant and 55% of the Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.}]

[(4) For animated or documentary Television Programs, 55% of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.}]

[(d) Reality Television Projects.}]

[(1) Reality Television Project Applicants must expend a minimum of \$250,000 in in-state spending.}]

[(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:}]

[(A) completing at least 60% of the total Man Hours in Texas; or}]

[(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.}]

[(3) 55% of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.}]

[(e) Commercials.}]

[(1) Commercial Applicants must expend a minimum of \$100,000 in in-state spending.}]

[(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:}]

[(A) completing at least 60% of the total Man Hours in Texas; or}]

[(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.}]

[(3) 55% of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.}]

[(f) Digital Interactive Media Productions.}]

[(1) Digital Interactive Media Production Applicants must expend a minimum of \$100,000 in in-state spending.}]

[(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:}]

[(A) completing at least 60% of the total Man Hours in Texas; or}]

[(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.}]

[(3) 55% of the combined total of Crew and Cast paid by the Applicant must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.}]

[(g) Educational or Instructional Videos.}]

[(1) Educational or Instructional Video Applicants must expend a minimum of \$100,000 in in-state spending.}]

[(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:}]

[(A) completing at least 60% of the total Man Hours in Texas; or}]

[(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.}]

[(3) 55% of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.}]

[(h) Visual Effects Projects.}]

[(1) Visual Effect Project for a Feature Film or Television Program:}]

[(A) Applicants must expend a minimum of \$250,000 in in-state spending.}]

[(B) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:}]

[(i) completing at least 60% of the total Man Hours in Texas; or}]

[(ii) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.}]

[(C) 55% of the Crew paid by the Applicant and 55% of the Cast paid by the Applicant, including extras, must be Texas Res-

idents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.]

[(2) Visual Effect Project for an Educational or Instruction Video or Commercial:]

[(A) Applicants must expend a minimum of \$100,000 in in-state spending:]

[(B) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:]

[(i) completing at least 60% of the total Man Hours in Texas; or]

[(ii) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas:]

[(C) 55% of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.]

§121.4. Ineligible Projects.

(a) The following types of projects are not eligible for grants under this program:

(1) pornography or obscene material, as described [defined] by section [Section] 43.21 of the Texas Penal Code;

(2) news, current event or public access programming, political advertising, including public service announcements which advance a public policy or political position, or programs that include weather or market reports;

(3) local events or religious services;

(4) productions not intended for commercial, educational, or instructional distribution;

(5) sporting events or activities;

(6) awards shows, galas, telethons or programs that solicit funds;

(7) projects intended for undergraduate or graduate course credit;

(8) application software, system software, or middleware;

(9) casino-type video games and interactive digital media experiences used in a gambling device, as [such term is] defined by section [in Section] 47.01, [of the] Texas Penal Code; or

(10) Commercials or advertising for the State of Texas or any Texas state agency or department.

(b) The Texas Film Commission (Commission) is not required to act on any application and may deny an application or eventual grant payments because of inappropriate content or content that portrays Texas or Texans in a negative fashion, as determined by the Commission. In determining whether to act on or deny an application, the Commission shall consider general standards of decency and respect for the diverse beliefs and values of the citizens of Texas. As part of the preliminary application process, the Commission shall review the Content Document, as defined in §121.8(a)(1)(C) of this chapter (related to Grant Application) [Chapter and shall advise the potential Ap-

plicant on whether the content precludes the project from receiving a grant].

(c) Once an approved project has been completed, the Commission shall review the final content before issuing the grant payment to determine if any substantial changes occurred during Production to include content described by subsection [Subsection] (a) or (b) of this section [Section].

§121.5. Eligible and Ineligible In-State Spending.

(a) The following are eligible expenditures:

(1) Wages paid to Texas Residents for work performed in Texas, including additional compensation paid as part of a contractual or collective bargaining agreement.

(2) Additional compensation or reimbursements paid to Texas Residents, including, but not limited to:

(A) mileage or car allowance;

(B) housing allowance; and

(C) box or kit rentals for use of personal equipment.

(3) Workers compensation insurance premiums for Texas Residents, but only if the premiums are paid to a [Texas-based insurance] company operating a physical business location in Texas [or broker].

(4) Payroll company service fees for Texas Residents, but only if paid to a Texas-based payroll company that processes payroll within Texas.

(5) Payments made to Texas Domiciled Entities [-domiciled entities], sole proprietorships, or individuals for goods and services used in Texas that are directly attributable to the Physical Production of the project. In the case of Digital Interactive Media Productions, Visual Effects Projects, and animated projects, the amount attributable to Pre-Production and research and development costs shall be limited to an amount not to exceed 30% of the project's overall in-state spending.

(6) Payments for shipping on shipments originating in Texas.

(7) Air travel to and from Texas on a Texas-based airline or on a Texas-based air charter service, provided that an itemized receipt showing an itinerary and passenger name from the airline is provided confirming payment.

(8) Rentals of vehicles registered and licensed in the State of Texas or rented from a Texas Domiciled Entity [-domiciled entity] or sole proprietorship, including, but not limited to, national rental car companies operating [with] one or more physical business locations at verifiable [outlets in] Texas addresses that are not P.O. boxes.

(9) Fees paid to Texas Residents to compose, orchestrate, and perform music that is specifically created for the project.

(10) Legal fees directly attributable to the Physical Production of the project that are paid to Texas-based lawyers or law firms.

(11) Internet purchases, but only if purchased from an [a Texas-domiciled] entity or sole proprietorship or a retailer with a physical store or outlet in Texas. Items purchased must be shipped directly to Texas.

(12) Capital expenditures for purchases from a business or sole proprietorship physically located in Texas that are:

(A) less than \$1,000 for an individual item [from a Texas-domiciled entity or sole proprietorship]; or

(B) equal to or greater than \$1,000 for an individual item purchased that is not exhausted during the course of Production, so long as such item is sold or appropriately disposed of at the end of Production and evidence of such sale or disposition is furnished to the Texas Film Commission (Commission). Evidence of sale or disposition must show that only the difference between the purchase price and the sale price is submitted as an eligible expenditure and a copy of the check or receipt for the sale must be included as back up with the original purchase documentation.

(13) Location fees, if an executed location agreement by and between the Applicant and the location owner or owner's representative is provided to the Commission with the Applicant's Expended Budget.

(b) The following are ineligible expenditures:

(1) Payments made to ~~[non-Texas-domiciled]~~ entities, to include [or if] a sole proprietorship or individual, not having a physical location in Texas, and to non-Texas Residents.

(2) Payments made for goods and services not used in Texas.

(3) Payments made for goods and services that are not directly attributable to the Physical Production of the project.

(4) Payments made by Digital Interactive Media Productions, Visual Effects Projects, and animated projects for Pre-Production costs that exceed 30% of the project's overall in-state spending.

(5) Expenses related to distribution, publicity, marketing, or promotion of the project, including, but not limited to, promotional stills.

(6) Payments, other than properly allowable location fees, for facilities and automobiles that are part of a permanent/continuous business operation including, but not limited to, rental, lease or mortgage payments, utilities, software, and insurance.

(7) Wages paid to non-Texas Residents, including additional compensation paid as part of a contractual or collective bargaining agreement.

(8) Payments made to a company, entity, association, or person that acts as an agent or broker for companies, entities, associations, or persons outside of Texas to provide goods, services, or labor for the purpose of utilizing [taking advantage of] the Texas Moving Image Industry Incentive Program to their benefit (also known as "pass-through" entities).

(9) Fees for story rights, music rights, or clearance rights and licensing fees.

(10) Additional compensation or reimbursements paid to non-Texas Residents, including, but not limited to:

(A) mileage or car allowance;

(B) housing allowance; and

(C) box or kit rentals for use of personal equipment.

(11) Workers' compensation insurance payments for non-Texas Residents.

(12) Payroll company or workers' compensation company service fees [for non-Texas Residents or those] paid to a company that does not operate a physical business location in Texas [non-Texas-based payroll company].

(13) Payments for shipments originating outside of Texas.

(14) Payments for mobile and landline telephone service if the service ~~[or billing]~~ address is not in Texas.

(15) Payments for alcoholic beverages, cigarettes, and tobacco products.

(16) Payments to adult-oriented businesses or for adult-oriented material.

(17) Payments for entertainment, including, but not limited to, parties, event tickets, movies, hotel mini-bar items, meals unrelated to the Physical Production of the project, and personal gifts.

(18) Payments for tips and gratuities.

(19) Capital expenditures for an individual item over \$1,000 which item is not exhausted during the course of Production, unless purchased in Texas [such purchase is from a Texas-domiciled entity or sole proprietorship], the item is sold at the end of the Production and evidence of such sale is furnished to the Commission. The documentation provided to the Commission must show that only the difference between the purchase price and the sale price is submitted as an eligible expenditure and a copy of the check or receipt for the sale should be included as back up with the original purchase documentation.

(20) Payments to any business that sells alcohol or tobacco products reflected on receipts which are not itemized, even if the submitted item itself is otherwise eligible.

(21) Any "talent handling fees," "overage fees," and "production fees" for a Commercial where the Applicant is a Production Company rather than the client or advertisement agency, other than the following items which must have been budgeted on the original, awarded bid to be eligible expenditures: the Applicant's insurance fees from the actual column of the actual Association of Independent Commercial Producers (AICP) budget (if it does not exceed the original, awarded bid and if a Texas-based insurance company or broker is used); editorial or Postproduction fees from the actual column of the AICP budget (if such fees do not exceed the Postproduction fees on the original, awarded bid); and any bona fide internal billing items which do not exceed the usual and customary cost of the goods or services, such as when Production Company employees work directly on the production using equipment and/or studio space owned by the Applicant that is "'rented'" to the production in lieu of using an outside vendor.

(22) Any payments made other than by the Applicant, including, but not limited to, payments made on behalf of the Applicant by a third party, unless a production services agreement or similar documentation is provided to show sufficient proof, as determined by the Commission in its sole discretion, of the relationship between the Applicant and the third party.

(c) The Commission has [reserves] the sole and exclusive authority [right] to determine which expenses are eligible or ineligible.

§121.6. *Grant Awards.*

(a) Feature Films, Television Programs, and Visual Effects Projects for Feature Films or Television Programs with total eligible in-state spending of:

(1) At least \$250,000 but less than \$1 million shall be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million but less than \$1.5 million [~~\$3.5 million~~] shall be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least \$1.5 million [~~\$3.5 million~~] shall be eligible to receive a grant equal to ~~25%~~ [20%] of eligible in-state spending.

(b) Digital Interactive Media Productions with total eligible in-state spending of:

(1) At least \$100,000 but less than \$1 million shall be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million but less than ~~\$1.5 million~~ [~~\$3.5 million~~] shall be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least ~~\$1.5 million~~ [~~\$3.5 million~~] shall be eligible to receive a grant equal to ~~25%~~ [20%] of eligible in-state spending.

(c) Reality Television Projects with total eligible in-state spending of:

(1) At least \$250,000 but less than \$1 million shall ~~will~~ be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million shall ~~will~~ be eligible to receive a grant equal to 10% of [total] eligible in-state spending.

(d) Commercials, Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educational or Instructional Videos with total eligible in-state spending of:

(1) At least \$100,000 but less than \$1 million shall ~~will~~ be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million shall ~~will~~ be eligible to receive a grant equal to 10% of [total] eligible in-state spending.

§121.7. Additional Grant Awards [Award].

An applicant ~~may~~ [shall] be eligible for one or more [a single] additional grants. The total grant amount a project may receive will be [grant] equal to an amount no greater than 31% [~~2.5%~~] of total in-state spending by meeting one or more of the following:

(1) Rural Filming Grant--Projects that complete [Completing] at least 35% [25%] of [their] total Filming Days or Man Hours in a county in this state with a population of 300,000 or less may receive an additional 2.5% of total in-state spending[, as applicable, in Underutilized or Economically Distressed Areas (UEDAs)].

[(A) In the event that multiple locations are utilized within a single Filming Day, in order to calculate the 25% of total Filming Days in UEDAs necessary to receive this additional grant, the Texas Film Commission (Commission) shall pro-rate a given Filming Day by the number of shooting locations reflected on production reports furnished by an Applicant to the Commission. For example, if eight shooting locations are utilized in a Filming Day, and five are located in UEDAs, 5/8 of that Filming Day shall count in calculating the 25% of total Filming Days necessary for this additional grant.]

[(B) If one or more shooting locations is not located in a UEDA, but is serviced by a basecamp located in a UEDA, such shooting locations shall be deemed to be located in a UEDA when calculating the 25% of total Filming Days necessary for this additional grant. A Production Company must have paid financial consideration to the owner/leaseholder of the basecamp location pursuant to a location agreement to be considered a "basecamp" under this subparagraph. The basecamp location must be listed on the call sheets and/or other relevant production documentation.]

[(C) The Commission shall identify the areas that qualify for designation as UEDAs.]

(2) Texas Veterans Grant--Projects demonstrating [Demonstrating] that 5% of the combined total of paid Crew and paid Cast, including extras, who are paid by the Applicant are Texas Resident Veterans may receive an additional 2.5% of total in-state spending. ["Veterans."]

(A) For purposes of this section [Section], a Veteran ["Veteran"] is a person who served in and has been honorably discharged from the United States Army, Navy, Marine Corps, Air Force, or Coast Guard; the National or Air National Guard of the United States; the Texas Army National Guard; the Texas Air National Guard; a Reserve component of any of the aforementioned military organizations; or any other military service that the Texas Film Commission (Commission) determines to be allowable.

(B) The Applicant shall submit sufficient information confirming the Veteran's status, including military-issued discharge documentation and other information requested by the Commission to support a determination that the person qualifies as a Veteran.

(3) Texas Historic Site Grant--Projects utilizing historic sites in this state as filming locations for 5% or more of total production days may receive an additional 2.5% of total in-state spending. To qualify for a grant under this section, filming locations must:

(A) be used for filming and not basecamps; and

(B) have either a Historic Designation from the Texas Historical Commission or be listed on the National Historic Places Register as administered by the Texas Historical Commission in conjunction with the National Parks Service.

(4) Workforce Development Grant--Projects partnering with a Texas Institution of Higher Education to provide moving image industry workforce development opportunities during the production of the project may receive an additional 2.5% of total in-state spending. To qualify for a grant under this section, a project must satisfy workforce development training criteria as determined by the Commission

(5) Postproduction Grant--Projects expending 25% of the total eligible in-state spending on eligible expenditures during Postproduction, including labor, vendors, and music costs. Costs associated with utilizing Texas music may receive an additional 1% of total in-state spending.

[(3) Expending 10% of the total eligible in-state spending on eligible expenditures during Postproduction, including labor, vendors, and music costs.]

§121.8. Grant Application.

(a) Initial Submission

(1) A Qualifying Application includes:

(A) A completed Qualifying Application form for the Texas Moving Image Industry Incentive Program;

(B) An itemized budget detailing only estimated Texas expenditures; and

(C) A Content Document:

(i) for Feature Films, Television Programs (except Episodic Television Series) and Visual Effects Projects for Feature Films and Television Programs: the full script;

(ii) for Episodic Television Series: the full script of the first episode in the series to be filmed in Texas and, if requested, full scripts for subsequent episodes to be filmed in Texas;

(iii) for Commercials, Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educational or Instructional Videos: the scripts, storyboards, or detailed outlines/summaries of content;

(iv) for Digital Interactive Media Productions: a summary of game content providing sufficient detail concerning the platform, themes, settings, story, characters, and events; or

(v) for Reality Television Projects: a detailed treatment or outline of program content.

(2) Application forms for each type of project are available by request to the Commission via telephone, Internet, or other means if additional special needs facilitation is required.

(3) Applications shall not be accepted earlier than 180 calendar days prior to a project's Principal Start Date.

(4) Applications must be received no later than 5:00 p.m. Central Time on the fifth Business Day prior to the Principal Start Date.

(5) Only one application by a single Applicant is allowed for a project.

(6) Within 5 Business Days of the Principal Start Date indicated on the Qualifying Application form, an Applicant for a Feature Film, Television Program, Reality Television Project, Digital Interactive Media Production, Visual Effects Project or Educational or Instructional Video must confirm with the Texas Film Commission (Commission) in writing, to include e-mail, that the production began on time. If the start of the project is delayed for more than 30 days, an application may be disqualified, and the Applicant may be required to reapply. If an Applicant fails to confirm that the production began on time within such 5 Business Day period, the Commission may, at its sole election but with no obligation to do so, disqualify the application.

(b) The Office of the Governor, as a state agency, must comply with the Texas Public Information Act (the "Act"). In the event that a public information request related to the Applicant and/or the application is submitted to the agency, the Office of the Governor shall notify the Applicant within a reasonable amount of time using the Applicant's most current contact information provided to the Commission.

§121.9. Processing and Review of Applications.

(a) All applications shall be reviewed in the order they are received.

(b) Initial Review.

(1) Each application shall go through an initial review process when the Qualifying Application is received. If an Applicant submits a Qualifying Application without all required materials, the Texas Film Commission (Commission) shall notify the Applicant by e-mail that the Applicant's application requires additional materials or documentation, and that not receiving them by the fifth Business Day prior to the project's Principle Start Date may result in disqualification of the application.

~~{(1) Each application shall go through an initial review process when the Qualifying Application is received.}~~

~~{(A) If an Applicant submits a Qualifying Application with all required materials, the Texas Film Commission (Commission) shall notify the Applicant by e-mail that the Commission has received the Applicant's complete application, and the preliminary eligibility determination process shall begin.}~~

~~{(B) If an Applicant submits a Qualifying Application without all required materials, the Commission shall notify the Applicant by e-mail that the Applicant's application requires additional materials or documentation, and that not receiving them by the fifth Business Day prior to the project's Principle Start Date may result in disqualification of the application.}~~

(2) Applicants may amend information on their application. The Commission shall determine whether an Applicant's amendment(s) require the Applicant to reapply.

(c) Preliminary Eligibility Determination.

(1) During the preliminary eligibility determination process, the Commission shall review the project's Qualifying Application and budget to identify eligible expenditures and to determine if the Applicant meets the minimum program requirements for in-state spending, Texas Filming Days, and Texas Residency.

(2) The Commission shall also review the Content Document, as defined in §121.8(a)(1)(C) of this chapter (related to Grant Application) [Chapter], to determine if the content qualifies for program eligibility [is appropriate].

(3) The Commission shall examine the Qualifying Application in light of the following criteria to assess, in the aggregate, the potential magnitude of the economic impact of the project in the State of Texas:

(A) the financial viability of the Applicant and the likelihood of successful project execution and planned spending in the State of Texas;

(B) proposed spending on existing state production infrastructure, including soundstages and industry vendors;

(C) the number of Texas jobs estimated to be created by the project;

(D) the ability to promote Texas as a tourist destination through the conduct of the project and planned expenditure of funds;

(E) the magnitude of estimated expenditures in Texas; and

(F) whether the project will be directed or produced by an individual who is a Texas Resident, with the term "produced by" meaning a non-honorary producer who has direct involvement in the day-to-day production of the project above the level of line producer.

(4) The Commission shall notify the Applicant by e-mail that the Qualifying Application is approved if:

(A) the Qualifying Application meets all minimum program requirements for in-state spending, Texas Filming Days, and Texas Residency, as determined by the Commission;

(B) the Commission determines there will be sufficient economic impact of the project in the State of Texas based on the criteria specified in paragraph (3) of this subsection [Subsection];

(C) the Commission determines the content, as described in the Content Document, is appropriate;

(D) appropriated funds are available at such time of determination; and

(E) the Commission, in its sole discretion, elects to approve the Qualifying Application based on the totality of the circumstances.

(5) If the Commission denies a Qualifying Application, the Commission shall notify the Applicant by e-mail that the Qualifying Application is denied. The notice shall inform the Applicant whether the denial is based on failure to meet the minimum program requirements, insufficient economic impact, inappropriate content, or some other reason. Qualifying Applications shall be assessed in the order in which they are received.

(6) All funding decisions made by the Commission are final and are not subject to appeal.

(d) Grant Agreement.

(1) Upon Commission approval of the Qualifying Application, the Commission shall issue a conditional award letter, which shall be contingent upon execution of a grant agreement between the Office of the Governor and the Applicant. The estimated grant amount shall be based upon the Applicant's estimated in-state spending.

(2) The grant agreement must be returned to the Commission with original signatures. The Commission may disqualify a project for the Applicant's failure to return the grant agreement with original signatures.

(e) Periodic Tracking and Review. After the grant agreement has been executed by both parties, the Commission may periodically review production activity including, but not limited to, requesting quarterly reports that describe in-state spending, production locations, and number of Texas Residents hired, and may require documentation for all of the above.

(f) Encumbrance of Funds.

(1) The Office of the Governor will not encumber funds until an Applicant provides a completed W-9 and a Texas Application for Payee Identification Number Form.

(2) The amount encumbered for a project shall be equal to the estimated grant amount in the grant agreement.

(3) Provided sufficient funds are available, the Commission, in its sole discretion, may adjust the amount encumbered, but only if an Applicant amends the estimated Texas spending amount on their Qualifying Application in writing, prior to submitting their Expended Budget as described in §121.11 of this chapter (related to Confirmation and Verification of Texas Expenditures) [~~Chapter~~].

(g) Verifying Texas Residency.

(1) In order to verify Texas Residency, the Applicant shall provide the Commission with completed Declaration of Texas Residency Forms for each Texas Resident Crew and Cast member.

(2) Declaration of Texas Residency Forms are available on the Commission's web site or by request to the Commission via telephone, Internet, or other means if additional special needs facilitation is required.

(3) In the event that a Crew or Cast member possesses one of the documents specified in the Declaration of Texas Residency Form, but not for the required 120 days, Texas Residency may also be verified if:

(A) the project consists of at least 30 Filming Days; and

(B) the Applicant provides one of the following documents naming said Crew or Cast member and dated at least 120 days and no more than 13 months prior to the project's Principal Start Date:

(i) an executed HUD-1 settlement statement showing the purchase of residential real property located in Texas; or

(ii) a notice of appraised value or bill assessing property tax on residential real property located in Texas.

(4) If a Crew or Cast member does not possess any of the documents specified in the Declaration of Texas Residency Form, Texas Residency may also be verified by attaching to the Declaration a copy of their military ID card and their military orders that:

(A) name said Crew or Cast member, or their spouse, parent, or legal guardian, as applicable;

(B) show a permanent change of station to a military station in Texas; and

(C) are dated at least 120 days prior to the project's Principal Start Date.

(h) [~~Texas Film~~] Commission Logo. The Commission may require as a condition of the grant agreement that the Applicant must include the Texas Film Commission logo in the closing credits of a Feature Film, Reality Series or Television Production, or in the credits of a Digital Interactive Media Production.

§121.10. *Disqualification of an Application.*

(a) A Qualifying Application may be disqualified at any time if a project does not meet the necessary requirements or if a Qualifying Application is incomplete. If a Qualifying Application is disqualified, the Texas Film Commission (Commission) shall notify the Applicant by e-mail. Qualifying Applications that have been disqualified may be resubmitted with the required changes or additional information, no earlier than 180 calendar days before the Principal Start Date, and no later than 5:00 p.m. Central Time on the fifth Business Day preceding the Principal Start Date.

(b) In the event that the principal start or completion date is changed, the Applicant must notify the Commission in writing, to include e-mail, of the new principal start or completion date, and must provide sufficient reasoning for the change. If the start of the project is delayed two or more times or for more than 30 days, a Qualifying Application may be disqualified and the Applicant may be required to reapply.

(c) A Qualifying Application may be disqualified for reasons including, but not limited to:

(1) failure to submit required documents and notifications, or additional documents as requested or as required by this chapter [~~Chapter~~];

(2) failure to meet minimum requirements for in-state spending, number of Texas Residents hired, and/or percentage of Filming Days;

(3) submission of false information;

(4) inappropriate content as described in section [~~Section~~] 43.21 of the Texas Penal Code or content described by §121.4(b) of this chapter (related to Ineligible Projects) [~~Chapter~~];

(5) lack of available funding;

(6) ineligible project as listed in §121.4 of this chapter [~~Chapter~~];

(7) pursuant and subject to §121.8(a)(6) of this chapter (related to Grant Application) [~~Chapter~~], if an Applicant fails to confirm that the production began on time;

(8) lack of meaningful production activity on a project, as determined in the Commission's sole discretion, for a period of at least six months; or

(9) a written, voluntary notification by the Applicant to the Commission of the cancellation of the project.

§121.14. *Revocation and Recapture of Incentives.*

(a) An Applicant's eligibility for funds may be revoked after the project is completed for the reasons enumerated in §121.10(c) of this chapter (related to Disqualification of an Application) [~~Chapter~~] or in accordance with the grant agreement.

(b) If an Applicant has already received grant funds under this chapter [Chapter] and the Texas Film Commission (Commission) determines the Applicant does not meet a requirement, the Commission may require that the Applicant return any sum of the grant funds paid to the Applicant.

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

Filed with the Office of the Secretary of State on February 2, 2026.

TRD-202600479
Stephanie Whallon
Director, Texas Film Commission
Texas Film Commission
Earliest possible date of adoption: March 15, 2026
For further information, please call: (512) 463-9200



13 TAC §121.13

The Office of the Governor ("OOG") proposes the repeal of 13 TAC §121.13, concerning Texas Heritage Project. The OOG identified the necessity of the proposed repeal while reviewing the rule in response to the passage of Senate Bill 22 (89-R), which significantly modified provisions of the Texas Moving Image Industry Incentive Program ("TMIIP") statutes.

REASONED JUSTIFICATION

The Texas Moving Image Industry Incentive Program ("TMIIP") was implemented to increase employment opportunities for Texas industry professionals, encourage tourism to the state, and boost economic activity in Texas cities and the overall Texas economy. The 89th Legislature passed Senate Bill 22, which among other actions, significantly modified the Texas Heritage Grant. In a future rulemaking, the OOG will propose a new rule regarding the Texas Heritage Grant, as well as another incentive created by Senate Bill 22, the Texas Faith-Based Moving Image Project grant.

FISCAL NOTE

Stephanie Whallon, Director, Texas Film Commission, has determined that during each year of the first five years in which the proposed amendments are in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT

Ms. Whallon has determined that for each year of the first five years the proposed repeal is in effect, the public benefit will be consistency and clarity in the OOG's rules regarding the administration of certain additional incentive grants.

PROBABLE ECONOMIC COSTS

There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Whallon has determined that during each year of the first five years in which the proposed repealed and new rules are in effect, the repeals and new rules:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;
- 3) will not require an increase or decrease in future legislative appropriations to the OOG;
- 4) will not require an increase or decrease in fees paid to the OOG;
- 5) do not create new regulations;
- 6) will repeal existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- 8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

Ms. Whallon has determined that there are no private real property interests affected by the proposed repeal. Thus, the Office is not required to prepare a takings impact assessment pursuant to Section 2007.043, Texas Government Code.

REQUEST FOR PUBLIC COMMENTS

Written comments regarding the proposed rule amendments may be submitted for 30 days following the date of publication of this notice by mail to Stephanie Whallon, Office of the Governor, Texas Film Commission, P.O. Box 12428, Austin, Texas 78711, or by email to TFCRules.Comments@gov.texas.gov with the subject line "TMIIP Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on March 15, 2026.

STATUTORY AUTHORITY.

The amendments are proposed under Section 485.022 of the Texas Government Code, which requires the Texas Film Commission to develop procedures for the administration and calculation of grant awards under TMIIP. The amendments are also proposed in accordance with Senate Bill 22, which took effect on September 1, 2025.

CROSS REFERENCE TO STATUTE

13 TAC §121.13. No other statutes, articles, or codes are affected by the proposed repeals.

§121.13. *Texas Heritage Project.*

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

Filed with the Office of the Secretary of State on February 2, 2026.

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Stephanie Whallon
Director, Texas Film Commission
Texas Film Commission
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For further information, please call: (512) 463-9200



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 97. MOTOR FUEL METERING AND QUALITY

The Texas Department of Licensing and Regulation (Department) proposes the repeal of an existing rule at 16 Texas Administrative Code (TAC), Chapter 97, Subchapter A, §97.1, new rules at Subchapter A, §97.1; Subchapter B, §97.32; Subchapter C, §97.44 and §97.45; and Subchapter D, §97.61, and amendments to existing rules at Subchapter A, §97.2 and §97.3; Subchapter B, §97.29 and §97.30; Subchapter C, §§97.40, 97.42, 97.43; Subchapter D, §97.58 and §97.59; and Subchapter E, §97.71, regarding the Motor Fuel Metering and Quality program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 97 implement Texas Occupations Code Chapter 2310, Texas Business and Commerce Code, Chapters 607, 607A, and Texas Government Code Chapter 426.

The proposed rules are necessary to implement Senate Bill (SB) 246, 88th Legislature, Regular Session (2023), SB 2371, 89th Legislature, Regular Session (2025), and House Bill (HB) 4690, 89th Legislature, Regular Session (2025), which amend state law regarding motor fuel quality and testing standards, stop-sale orders, and skimmer reporting requirements for service technicians.

SECTION-BY-SECTION SUMMARY

The proposed rules repeal existing §97.1, Authority. The provisions in this repealed rule have been updated and supplemented under new §97.1, Authority.

The proposed rules add new §97.1, Authority. This new rule includes provisions from existing §97.1, which is being repealed, and updates and supplements the existing authority by adding Texas Business and Commerce Code Chapter 607A and Texas Government Code Chapter 426, to the list of applicable statutes authorizing the rules under Chapter 97.

The proposed rules amend §97.2, Definitions, by adding a definition for "Center"; amending the definitions for "Device," "Operator," and "Test standard" to remove references to "weighing" and "weight"; amending the definition for "Tamper-evident security" to correct punctuation; adding a definition for "Electronic terminal;" amending the definition for "Skimmer" to reference newly passed legislation, and renumbering the remaining provisions accordingly.

The proposed rules amend §97.3, Adoption of Standards by Reference, by removing and adding standards adopted by reference to bring the rules in line with the requirements of HB 4690; noting statutory exceptions to motor fuel quality standards; adopting standards for the collecting, sampling, and handling of motor fuel; and renumbering sections accordingly.

The proposed rules amend §97.29, Detection and Reporting of Skimmers, by removing the term "Payment Card" from the section title so that it reads "Detection and Reporting of Skimmers." The proposed rules also clarify that the section applies to skimmers on or in devices as defined by the proposed rules.

The proposed rules amend §97.30, Unauthorized Removal of Skimmers Prohibited, to clarify that the section applies to skimmers on or in devices as defined by the proposed rules.

The proposed rules add new §97.32, Device Specifications and Tolerances, to set the specifications and tolerances for devices

under these proposed rules to be the same as the most recently adopted National Institute of Standards and Technology (NIST) standards, as required by HB 4690.

The proposed rules amend §97.40, Distributor, Supplier, Wholesaler--Certificate of Compliance, by removing the term "Jobber" from the section title so that it reads "Distributor, Supplier, Wholesaler--Certificate of Compliance" and removing the term "jobber" from the rule text.

The proposed rules amend §97.42, Stop-Sale Order; Appeal; Remediation, by revising the section title from "Stop-Sale Order" to "Stop-Sale Order; Appeal; Remediation"; amending subsection (a) to allow the Department, with the approval of the executive director, to issue a stop-sale order; amending subsection (b) to include offering to sell motor fuel as an act prohibited by a stop-sale order and to clarify that a stop-sale order is lifted if a dealer or operator prevails in an appeal of the order; and adding new subsection (c) to clarify the process for issuance of a remediation plan to violators following a stop-sale order and to explain the factors the Department may consider when lifting a stop-sale order.

The proposed rules amend §97.43, Fuel Delivery Records, to remove the term "jobbers" from the rule text.

The proposed rules add new §97.44, Methods and Procedures for Collecting, Sampling, and Handling Motor Fuel. The proposed new rule requires the Department or an authorized representative of the Department to collect, sample, and handle motor fuel following the methods and procedures set out in the applicable standards as prescribed under new §97.3(5) and subject to the needs of the Department.

The proposed rules add new §97.45, Methods and Procedures for Testing Motor Fuel Quality. The proposed new rule requires the Department or an authorized representative of the Department to test motor fuel according to the applicable standards as prescribed by §97.3(2).

The proposed rules amend §97.58, Test Standards and Laboratories, by revising the section title from "Test Standards" to "Test Standards and Laboratories"; and adding new subsection (d) to provide that a metrology laboratory certified by the NIST is approved by the Department to inspect and correct the standards for motor fuel used to perform device maintenance activities.

The proposed rules amend §97.59, Inspection for Skimmers, by removing the term "Payment Card" from the section title so that it reads "Inspection for Skimmers."

The proposed rules add new §97.61, Reporting Skimmers on Electronic Terminals. The proposed new rule requires service technicians, or the service company that employs them, to notify owners or operators of the presence of skimmers on electronic terminals and report the skimmer to the Financial Crimes Intelligence Center (FCIC).

The proposed rules amend §97.71, Distributor, Wholesaler, and Supplier Fees, by removing the term "jobber" from the section title so that it reads "Distributor, Wholesaler, and Supplier Fees"; removing the term "jobber" from the rule text; and renumbering the remaining provisions accordingly.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Senior Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or

reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to local government, and no estimated increase in revenue to state government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that TDLR standards are aligned with industry standards for motor fuel quantity, quality, and testing practices; ensuring that fuel quality standards remain high and contaminated fuel can be quickly remediated; removing general references to standards and replacing them with specific standards; enhancing FCIC's ability to track and fight financial crimes by requiring service technicians to report skimmers on electronic terminals; clarifying the stop sale remediation process for licensees.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules require an increase or decrease in fees paid to the agency. The proposed rules require a decrease in

fees paid to the agency by eliminating the jobber certificate of compliance.

5. The proposed rules create a new regulation. The proposed rules create a new regulation by creating exceptions to motor fuel quality standards; adding motor fuel collecting, sampling, handling, and testing standards and procedures, and device specifications and tolerances; and authorizing the provision of a remediation plan for a device or fuel subject to a stop-sale order.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand an existing regulation by stating a metrology laboratory certified by NIST is also approved by TDLR. The proposed rules repeal an existing regulation by eliminating the jobber certificate of compliance.

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

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information.

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §97.1

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426. No other statutes, articles, or codes are affected by the proposed repeal.

The legislation that enacted the statutory authority under which the proposed repeal is proposed to be adopted is SB 246, 88th Legislature, Regular Session (2023), SB 2371, 89th Legislature, Regular Session (2025), and HB 4690, 89th Legislature, Regular Session (2025).

§97.1. Authority.

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

Filed with the Office of the Secretary of State on February 2, 2026.

TRD-202600482

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 15, 2026

For further information, please call: (512) 463-7750



16 TAC §§97.1 - 97.3

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is SB 246, 88th Legislature, Regular Session (2023), SB 2371, 89th Legislature, Regular Session (2025), and HB 4690, 89th Legislature, Regular Session (2025).

§97.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426.

§97.2. Definitions.

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

(1) ASTM--ASTM International; the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems and services and the promotion of related knowledge.

(2) Center--The Financial Crimes Intelligence Center established under Texas Government Code Chapter 426.

(3) [(2)] Code--The Texas Occupations Code, Chapter 2310, [^]Motor Fuel Metering and Quality.[^]

(4) [(3)] Commission--Texas Commission of Licensing and Regulation.

(5) [(4)] Controlling person--An [an] individual who:

(A) is a sole proprietor;

(B) is a general partner of a partnership;

(C) is a controlling person of a business entity that is a general partner of a partnership;

(D) possesses direct or indirect control of at least 25 percent of the voting securities of a corporation;

(E) is the president, the secretary, or a director of a corporation; or

(F) possesses the authority to set policy or direct the management of a business entity.

(6) [(5)] Department--Texas Department of Licensing and Regulation.

(7) [(6)] Device--A [commercial weighing or measuring device used for motor fuel sales, also defined as a] motor fuel metering device as defined by §2310.001(7) of the Code.

(8) [(7)] Device performance review (DPR)--The comprehensive inspection and testing of a motor fuel metering device to ensure it is calibrated and operating according to NIST and Manufacturer specifications.

(9) Electronic terminal--This term has the meaning assigned by Texas Business and Commerce Code §607A.001 and does not include motor fuel metering devices as defined by §2310.001 of the Code or motor fuel unattended payment terminals as defined by Texas Business and Commerce Code §607.001.

(10) [(8)] Gasoline--A liquid or combination of liquids blended together, offered for sale, sold, used, or capable of use as fuel for a gasoline-powered engine. The term includes gasohol, aviation gasoline, and blending agents, but does not include compressed natural gas, liquefied natural gas, racing gasoline, diesel fuel, aviation jet fuel, or liquefied gas, as defined in §162.001(29) of the Texas Tax Code.

(11) [(9)] GPM--Gallons per minute.

(12) [(10)] ISO--International Organization for Standardization; an independent, non-governmental organization that develops voluntary international standards to facilitate world trade by providing common standards among nations.

(13) [(11)] Merchant--A person whose business includes the sale of motor fuel through motor fuel metering devices, as defined by §607.001(4) of the Texas Business and Commerce Code.

(14) [(12)] Motor fuel--Gasoline, diesel fuel, gasoline blended fuel, compressed natural gas, liquefied natural gas, and other products that are offered for sale, sold, used, or capable of use as fuel for a gasoline-powered engine or a diesel-powered engine, as defined in §162.001(42) of the Texas Tax Code.

(15) [(13)] NIST--The National Institute of Standards and Technology; a non-regulatory federal agency under the United States Department of Commerce, which certifies and provides standard reference materials used to perform instrument calibrations, verifies the accuracy of specific measurements and supports the development of new measurement methods.

(16) [(14)] Operator--A person in possession or control of a [weighing or] measuring device, as defined in §2310.001(8) of the Code.

(17) [(15)] Skimmer--A wire or electronic device that is capable of unlawfully intercepting electronic communications or data

to perpetrate fraud, as defined by §607.001(8) and 607A.001(11) of the Texas Business and Commerce Code.

(18) [(16)] Tamper-evident security label--A [label""A] label or tape that, once applied to a surface, cannot be removed without self-destructing, or otherwise leaving a clear indication that the label or tape has been removed.

(19) [(17)] Test standard--A certified [weight or] measure used to test a device for accuracy.

§97.3. Adoption of Standards by Reference.

In accordance with [Chapter 2310 of] the Code, the department adopts the currently published edition of each of the following nationally recognized minimum standards with certain exceptions for the purpose of administering and enforcing this chapter:

(1) Legal standards for [weights and] measures. NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."

(2) Motor fuel quality [testing] standards.

(A) ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," as the standard specifications for gasoline or gasoline blended with ethanol;

[(A) NIST Handbook 130, "Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality," relating to "Uniform Fuels and Automotive Lubricants Regulations," as standard specifications for ethanol blends with the following modifications:]

[(i) vapor pressure tolerance not exceeding one pound per square inch for motor fuels blended with up to 15 volume percent ethanol, excluding the time period from May 1 through October 1 for counties required to have low emissions fuels;]

[(ii) vapor pressure seasonal specifications may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification must not be offered for retail sale prior to the effective date of the higher volatility classification; and]

[(iii) the vapor/liquid ratio specification must be waived for motor fuels blended with ethanol.]

[(B) ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," as the standard specifications for gasoline with the following modification, vapor pressure and vapor/liquid ratio seasonal specifications may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification must not be offered for retail sale prior to the effective date of the higher volatility classification.]

(B) [(C)] ASTM D975, "Standard Specification for Diesel Fuel," as the standard specifications for diesel motor fuels and renewable diesel fuels;

(C) [(D)] ASTM D5798, "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines," as the standard specifications for 51 volume percent to 83 volume percent ethanol fuel;

(D) [(E)] ASTM D6751, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels;"

(E) [(F)] ASTM D7467, "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20);" and

(F) [(G)] ASTM D7794, "Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible Fuel Vehicles with

Automotive Spark-Ignition Engines," as the standard specification for gasoline ethanol blends containing 16 to 50 volume percent ethanol.

(3) Exceptions to motor fuel quality standards. Exceptions to motor fuel quality standards shall be those set out by §2310.2031 of the Code.

(4) [(3)] Automotive Fuel Rating. The testing methods, standards, and specifications used to determine the automotive fuel rating shall be those prescribed by the most current editions of:

(A) ASTM D2699, "Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel;"

(B) ASTM D2700, "Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel;"

(C) ASTM D2885 "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique;" and

(D) ASTM D5599, "Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection."

(5) Collecting, sampling, and handling motor fuel. The standards for collecting, sampling, and handling motor fuel shall be those prescribed by the most current edition of:

(A) ASTM D4057, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products;"

(B) ASTM D5842, "Standard Practice for Sampling and Handling of Fuels for Volatility Measurement;" and

(C) ASTM D5854, "Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products."

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

Filed with the Office of the Secretary of State on February 2, 2026.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



SUBCHAPTER B. MOTOR FUEL METERING DEVICES

16 TAC §§97.29, 97.30, 97.32

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2310,

Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is SB 246, 88th Legislature, Regular Session (2023), SB 2371, 89th Legislature, Regular Session (2025), and HB 4690, 89th Legislature, Regular Session (2025).

§97.29. Detection and Reporting of [Payment Card] Skimmers.

(a) An owner or operator who discovers or is notified of the presence of a skimmer on or in a device by a service technician or employee must:

- (1) immediately make a report to local law enforcement that a skimmer has been discovered and is still installed in the device;
- (2) notify the department within 24 hours of the discovery on a form prescribed by the department;
- (3) request the law enforcement report or case number and submit it in a manner prescribed by the department; and
- (4) place each affected device out of service and block access to the dispenser to prevent tampering with evidence until the skimmer has been removed as authorized under this chapter.

(b) The owner or operator must cooperate with law enforcement, the department, and the Center in the investigation of a suspected or discovered skimmer.

(c) The owner or operator must provide a copy of available photographic and/or video surveillance of the retail facility to law enforcement.

§97.30. Unauthorized Removal of Skimmers Prohibited.

(a) In order to preserve evidence and the chain of custody, an owner or operator, retail facility employee, or unlicensed service technician is prohibited from removing a skimmer from a device unless instructed to do so by law enforcement or the department.

(b) If neither law enforcement nor the department has arrived to remove a skimmer from a device within 48 hours after the owner or operator has notified the department as required by §97.29(a)(2), the skimmer may be removed in accordance with subsection (c).

(c) When removing a skimmer under this section, an individual must:

- (1) wear sterile gloves while removing the skimmer(s);
- (2) place each skimmer in a clear plastic bag, seal the bag, and label the sealed bag with the date and time the skimmer was removed and bagged, along with the initials of the person removing the skimmer; and
- (3) transfer the skimmer(s) to local law enforcement and request the law enforcement case or report number.

(d) The owner or operator must provide the law enforcement case or report number to the department in a manner prescribed by the department following transfer of the skimmer to law enforcement.

§97.32. Device Specifications and Tolerances.

Specifications and tolerances for devices under this chapter shall be the same as the most recently adopted NIST standards at the time the device is used.

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

Filed with the Office of the Secretary of State on February 2, 2026.

TRD-202600484

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 15, 2026

For further information, please call: (512) 463-7750

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SUBCHAPTER C. SALE, DELIVERY, AND
QUALITY OF MOTOR FUEL

16 TAC §§97.40, 97.42 - 97.45

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is SB 246, 88th Legislature, Regular Session (2023), SB 2371, 89th Legislature, Regular Session (2025), and HB 4690, 89th Legislature, Regular Session (2025).

§97.40. Distributor, [Jobber,] Supplier, Wholesaler--Certificate of Compliance.

(a) To be eligible for a certificate of compliance, a distributor, [jobber,] supplier, or wholesaler must:

- (1) submit complete business, facility, and contact information in a manner prescribed by the department; and
- (2) pay the fee required under §97.71.

(b) A change in the name or contact information of the owner or operator must be submitted to the department within 30 calendar days.

(c) A certificate of compliance is valid for two years from the date of issuance by the department.

§97.42. Stop-Sale Order; Appeal; Remediation.

(a) The [executive director of the] department, with the approval of the executive director, may issue an order to stop sale of:

- (1) motor fuel sold or offered for sale in violation of this chapter; or
- (2) motor fuel sold or offered for sale by or through a device that is in violation of this chapter.

(b) Motor fuel subject to a stop-sale order may not be sold or offered for sale until: [the order has been discharged by a court pursuant to §2310.060 of the Code, or]

(1) the [executive director receives notice acceptable to the] department finds that the motor fuel or device is in compliance with this chapter; or[-]

(2) the dealer or operator prevails in an appeal of the department's order as prescribed by §2310.060 of the Code.

(c) Following the issuance of a stop-sale order under subsection (a), the department may provide a license holder with a remediation plan that contains suggested measures to cure violations. To make a finding that the motor fuel or device is in compliance with this chapter under subsection (b)(1), the department may consider the license holder's compliance with any provided remediation plan. The department may evaluate evidence of remediation provided by the license holder or request additional information. The department or an authorized representative may conduct additional testing to verify the motor fuel or device is in compliance with this chapter.

§97.43. Fuel Delivery Records.

(a) Dealers, distributors, [jobbers,] suppliers, and wholesalers must keep the following records for four years:

(1) all invoices, receipts, or other transmittal records of the purchase, sale, delivery, or distribution of motor fuel; and

(2) any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed.

(b) All delivery tickets and letters of certification related to automotive fuel rating must be maintained by dealers, distributors, [jobbers,] suppliers, and wholesalers for one year.

(c) All records required to be maintained shall be made available upon request by the department or an authorized representative of the department.

§97.44. Methods and Procedures for Collecting, Sampling, and Handling Motor Fuel.

(a) The department or an authorized representative of the department shall collect, sample, and handle motor fuel following the methods and procedures set out in the applicable ASTM standards as prescribed under §97.3(5) and subject to the needs of the department.

(b) These procedures are used in conjunction with the stop-sale order requirements under §2310.060 of the Code and §97.42 of this chapter.

§97.45. Methods and Procedures for Testing Motor Fuel Quality.

(a) The department or an authorized representative of the department may collect samples and conduct testing at any location where motor fuel is kept, transferred, sold, or offered for sale to verify that the motor fuel complies with the minimum standards as prescribed under the most recently adopted or amended ASTM standard on the date of the test.

(b) The department or the authorized representative of the department will follow the methods and procedures set out in the applicable standards as prescribed under §97.3(2).

(c) These procedures are used in conjunction with the motor fuel quality testing requirements established by section 2310.203 of the Code.

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

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Doug Jennings
General Counsel

Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7750



SUBCHAPTER D. SERVICE COMPANIES AND SERVICE TECHNICIANS

16 TAC §§97.58, 97.59, 97.61

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is SB 246, 88th Legislature, Regular Session (2023), SB 2371, 89th Legislature, Regular Session (2025), and HB 4690, 89th Legislature, Regular Session (2025).

§97.58. Test Standards and Laboratories.

(a) Test standards must be certified annually by a recognized or accredited laboratory that adheres to ISO 17025 standards. A service company must maintain at least one test standard per licensed device category as follows:

(1) Low flow: five-gallon or greater test measure or prover;

(2) High flow: prover with a capacity that exceeds the amount of liquid delivered by the device in one minute at the maximum flow rate.

(b) A test standard that becomes damaged must be taken out of operation immediately and recalibrated prior to use. A test standard that is beyond repair must be taken out of service permanently.

(c) A service company must maintain the minimum test standards per licensed device category at all times.

(d) For purposes of §2310.106(f) of the Code, a metrology laboratory certified by the National Institute of Standards and Technology is approved by the department.

§97.59. Inspection for [Payment Card] Skimmers.

(a) A service technician must inspect for the presence of a skimmer:

(1) during a device performance review; and

(2) each time a motor fuel dispenser is opened to perform device maintenance activities.

(b) A service technician or the service company that employs the technician must report the finding of a skimmer:

(1) immediately to the owner or operator; and

(2) within 24 hours to the department on a form prescribed by the department.

(c) In order to preserve evidence and the chain of custody, a service technician must not remove a skimmer unless instructed by law enforcement or the department.

(d) If neither law enforcement nor the department has arrived to remove a skimmer within 48 hours after the owner or operator has notified the department as required by §97.29, the skimmer may be removed in accordance with subsection (e).

(e) When removing a skimmer under this section, an individual must:

(1) wear sterile gloves while removing the skimmer(s);

(2) place each skimmer in a clear plastic bag, seal the bag, and label the sealed bag with the date and time the skimmer was removed and bagged, along with the initials of the person removing the skimmer; and

(3) transfer the skimmer(s) to local law enforcement and request the law enforcement case or report number.

(f) The service technician must provide the law enforcement case or report number to the department in a manner prescribed by the department following transfer of the skimmer to law enforcement.

§97.61. Reporting Skimmers On Electronic Terminals.

If a service technician discovers a skimmer in or on an electronic terminal, the service technician or service company that employs the technician shall notify the owner or operator of the presence of a skimmer and report the skimmer to the Center using the secure portal on its website, <https://fcic.texas.gov>.

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

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



SUBCHAPTER E. FEES

16 TAC §97.71

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, Texas Business and Commerce Code Chapters 607 and 607A, and Texas Government Code Chapter 426. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is SB 246, 88th Legislature, Regular Session (2023), SB 2371, 89th Legislature, Regular Session (2025), and HB 4690, 89th Legislature, Regular Session (2025).

§97.71. Distributor, [Jobber,] Wholesaler, and Supplier Fees.

(a) Certificate of Compliance Fees:

(1) Distributor--\$80.

~~{(2) Jobber--\$80.}~~

(2) ~~[(3)]~~ Wholesaler--\$80.

(3) ~~[(4)]~~ Supplier--\$2600.

(b) Late fees do not apply to this section.

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

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Doug Jennings

General Counsel

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1023

The Texas Education Agency (TEA) proposes an amendment to §74.1023, concerning the financial aid application requirement for high school graduation. The proposed amendment would reflect statutory requirements and update the methods of proof to verify completion of a financial aid application.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §28.0256, requires a student to complete a financial aid application, either the Free Application for Federal Student Aid (FAFSA) or the Texas Application for Student Financial Aid (TASFA), in order to graduate. The statute provides an exception for students to opt out of the financial aid application requirement by submitting a form signed by a parent, guardian, or student aged 18 years old or older that authorizes the student to decline to comply with the financial aid application graduation requirement. A high school counselor may also authorize a student to decline to comply with the financial aid application graduation requirement for good cause. The opt-out form must be approved by TEA. Additionally, the statute prohibits a counselor from indicating that a student has not complied with

the financial aid requirement if the school district or open-enrollment charter school has not provided an opt-out form to the student or student's parent or legal guardian and prohibits a counselor from indicating the manner in which a student met the requirement, except for the purpose of complying with reporting requirement under TEC, §28.0256(e)(2).

The proposed amendment to 19 TAC §74.1023 would align the rule with statute. The proposed amendment would update the methods of proof for verification that a student has completed the financial aid application requirement for graduation; prohibit a counselor from indicating that a student has not complied with the financial aid requirement if the school district or open-enrollment charter school has not provided an opt-out form to the student or student's parent or legal guardian; and prohibit a counselor from indicating the manner in which a student met the requirement, except for the purpose of complying with reporting requirement under TEC, §28.0256(e)(2).

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding to the methods of proof of compliance, specifying what a school counselor can report about a student's compliance with the requirement, and establishing that a counselor may not indicate that a student has not complied with the requirement if the school district or charter school did not provide the form.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to clarify the appropriate use of student infor-

mation for the financial aid application reporting requirement in Texas Student Data System Public Education Information Management System and expand the methods by which compliance maybe demonstrated.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins February 13, 2026, and ends March 16, 2026. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 13, 2026. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under TEC, §28.0256(a), which requires each student to complete and submit a FAFSA or a TASFA before graduating from high school; TEC, §28.0256(b), which allows a student to formally opt out of the financial aid application requirement by submitting a TEA-approved form; TEC, §28.0256(c), which requires that the adopted opt-out form provide the option for the student's parent or legal guardian, as applicable, to decline to complete and submit an application; TEC, §28.0256(d), which prohibits a counselor from indicating that a student has not complied with the financial aid application requirement if the school district or open-enrollment charter school has not provided the adopted opt-out form to the student or student's parent or legal guardian. Additionally, TEC, §28.0256(d), establishes that a counselor may indicate the manner in which a student complied with the financial aid application requirement only as necessary for the district or school to comply with reporting requirements under TEC §28.0256(e)(2); and TEC, §28.0256(d) and (e)(2), which add open-enrollment charter schools to the financial aid application requirements.

CROSS REFERENCE TO STATUTE. The amendment implements TEC, §28.0256(a)-(e).

§74.1023. Financial Aid Application Requirement for High School Graduation.

(a) In accordance with Texas Education Code (TEC), §28.0256, beginning with students enrolled in Grade 12 during the 2021-2022 school year, a student shall complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) as a requirement for receiving a high school diploma except as otherwise provided by subsection (b) of this section.

(b) A student may graduate under the Foundation High School Program without completing a financial aid application [opt out of the financial aid application requirement in subsection (a) of this section] under one of the following conditions:

(1) the student's parent or other person standing in parental relation submits a signed form indicating that the parent or other person declines or authorizes the student to decline to complete and submit the financial aid application;

(2) the student signs and submits the form described by paragraph (1) of this subsection on the student's own behalf if the student is 18 years of age or older or is emancipated under the Texas Family Code, Chapter 31; or

(3) a school counselor signs and submits the form described by paragraph (1) of this subsection indicating that the school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor.

(c) The board of trustees for each school district and open-enrollment charter school shall adopt the standard opt-out form provided by the Texas Education Agency (TEA) for the purpose of the exceptions under subsection (b) of this section.

(1) The opt-out form shall be available in English, Spanish, and any other language spoken by a majority of the students enrolled in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, in the district or charter school. Districts and charter schools are responsible for translations not provided by TEA.

(2) The opt-out form must include the student's signature of intent in order for the student to decline to complete a financial aid application prior to the student's anticipated graduation date.

(d) Each school district and open-enrollment charter school shall provide students with the following notifications regarding the financial aid application requirement.

(1) Standard information regarding the financial aid requirement and the exceptions under subsection (b) of this section shall be provided at the time a student first registers for one or more classes required for high school graduation.

(2) Detailed information regarding instructions for the completion and submission of a financial aid application shall be provided to a student at the beginning of Grade 12 or at the time a student in Grade 12 transfers into a high school from a non-public school or a public school outside of Texas. The instructions shall include:

(A) an explanation of the FAFSA and TASFA and the difference between the two;

(B) instructions for how to access the FAFSA and TASFA, including key dates and deadlines for completion and submission;

(C) resources available to support completion and submission of the FAFSA and TASFA;

(D) documents and information required to complete the FAFSA or TASFA; and

(E) contact information for school staff or local community resources available to support completion of the forms.

(3) Options available to a student under subsection (b) of this section if a student or parent wishes to decline to complete and submit a financial aid application shall be provided to a student at the beginning of Grade 12 or at the time a student in Grade 12 transfers into a high school from a non-public school or a public school outside of Texas. The options shall include:

(A) the opt-out form and explanation of required signatures; and

(B) notification that if the parent or student chooses to opt out for the purposes of the student's graduation, the student will still be eligible to complete the FAFSA or TASFA that year or in subsequent years.

(e) Each school district and open-enrollment charter school shall require one of the following methods of proof that a student has completed and submitted the FAFSA or TASFA as required by this section.

~~(1) Completion and submission of the FAFSA shall be confirmed through one of the following methods:~~

~~(1) [(A)] ApplyTexas Counselor Suite financial aid application [FAFSA] data;~~

~~(2) [(B)] notification from the United States Department of Education or the Texas Higher Education Coordinating Board that demonstrates a student has completed and submitted a financial aid application [FAFSA]; or~~

~~(3) [(C)] a local policy developed by a school district or an open-enrollment charter school for the method by which a student must provide proof that the student has completed a financial aid application [FAFSA].~~

~~[(2) School districts and open-enrollment charter schools shall develop a local policy for the method by which a student must provide proof that the student has completed a TASFA.]~~

~~(f) A school counselor may only notify a school district or open-enrollment charter school whether a student has complied with this section for purposes of determining whether the student meets high school graduation requirements and may not indicate the manner in which the student complied, except as necessary for the district or charter school to comply with Texas Student Data System Public Education Information Management System (TSDS PEIMS) reporting requirements under subsection (e) of this section.~~

~~(g) A school counselor may not indicate that a student has not complied with the financial aid application graduation requirement if the school district or open-enrollment charter school fails to provide the opt-out form described by subsection (c) of this section to the student or the student's parent or guardian.~~

~~(h) [(f)] Each school district and open-enrollment charter school shall report through the TSDS PEIMS [Texas Student Data System Public Education Information Management System (TSDS PEIMS)] the following information not later than December 1 of each school year for students awarded diplomas in the previous school year:~~

~~(1) the number of students who completed and submitted a financial aid application; and~~

~~(2) the number of students who submitted an exception.~~

~~(i) [(h)] Each school district and open-enrollment charter school shall maintain student financial aid application information securely and ensure compliance with federal law regarding the confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.~~

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

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§749.801, 749.811, 749.813, 749.831, 749.833, 749.861, 749.863 - 749.865, 749.867 - 749.869, 749.881 - 749.883, 749.885, 749.887, 749.889, 749.911, 749.913, 749.915, 749.930, 749.931 - 749.933, 749.935, 749.937, 749.939, 749.941, 749.943 - 749.945, 749.947, 749.949, 749.1001, 749.1003, 749.1005, 749.1007, 749.1009, 749.1011, 749.1013, 749.1015, 749.1017, 749.1019, 749.1021, 749.1101, 749.1103, 749.1105, 749.1107, 749.1109, 749.1111, 749.1113, 749.1115, 749.1131, 749.1133, 749.1135, 749.1137, 749.1151, 749.1153, 749.1155, 749.1181, 749.1183, 749.1185, 749.1187, 749.1189, 749.1251, 749.1253, 749.1255, 749.1281, 749.1291, 749.1301, 749.1305, 749.1307, 749.1309, 749.1311 - 749.1313, 749.1315, 749.1317, 749.1319, 749.1321, 749.1323, 749.1331, 749.1333, 749.1335 - 749.1337, 749.1339, 749.1361, 749.1363, 749.1365, 749.1367, 749.1369, 749.1371, 749.1373, 749.1377, 749.1401, 749.1403, 749.1405, 749.1409, 749.1411, 749.1413, 749.1415, 749.1417, 749.1421, 749.1423, 749.1425, 749.1427, 749.1429, 749.1431, 749.1433, 749.1435, 749.1437, 749.1461, 749.1463, 749.1469, 749.1501, 749.1503, 749.1521, 749.1541, 749.1543, 749.1545, 749.1561, 749.1563, 749.1565, 749.1581, 749.1583, 749.1603, 749.1605, 749.1607, 749.1609, 749.1611, 749.1641, 749.1643, 749.1645, 749.1647, 749.1671, 749.1673, 749.1675, 749.1801, 749.1803, 749.1805, 749.1807, 749.1809, 749.1811, 749.1813, 749.1815, 749.1817, 749.1819, 749.1821, 749.1841, 749.1861, 749.1863, 749.1865, 749.1891, 749.1893, 749.1895, 749.1921, 749.1923, 749.1925, 749.1927, 749.1951, 749.1953, 749.1955, 749.1957, 749.1959, 749.1961, 749.2001, 749.2051, 749.2053, 749.2055, 749.2059, 749.2061, 749.2063, 749.2101, 749.2103, 749.2105, 749.2107, 749.2151, 749.2153, 749.2201, 749.2203, 749.2205, 749.2231, 749.2233, 749.2281, 749.2283, 749.2301, 749.2303, 749.2305, 749.2307, 749.2331, 749.2333, 749.2335, 749.2337, 749.2339, 749.2381, 749.2383, 749.2401, 749.2403, 749.2405, 749.2407, 749.2445, 749.2447, 749.2449, 749.2451, 749.2453, 749.2470, 749.2473, 749.2475, 749.2477, 749.2479, 749.2481, 749.2483, 749.2485, 749.2487 - 749.2489, 749.2491, 749.2493, 749.2495, 749.2497, 749.2520, 749.2521, 749.2523, 749.2525 - 749.2527, 749.2529, 749.2531, 749.2533, 749.2535, 749.2537, 749.2539, 749.2550, 749.2551, 749.2555, 749.2557, 749.2591, 749.2593, 749.2595, 749.2597, 749.2599, 749.2601, 749.2603, 749.2605, 749.2607, 749.2621, 749.2623, 749.2625, 749.2627, 749.2629, 749.2631, 749.2633, 749.2635, 749.2651, 749.2653, 749.2655, 749.2801, 749.2803, 749.2805, 749.2807, 749.2809, 749.2811, 749.2813 - 749.2815, 749.2817, 749.2819, 749.2821, 749.2823, 749.2825, 749.2901 - 749.2905,

749.2907 - 749.2909, 749.2911, 749.2913, 749.2915, 749.2917, 749.2931, 749.2961, 749.2963, 749.2965, 749.2967, 749.3021, 749.3023, 749.3025, 749.3027, 749.3029, 749.3031, 749.3033, 749.3035, 749.3037, 749.3039, 749.3041, 749.3043, 749.3061, 749.3063, 749.3065, 749.3067, 749.3069, 749.3071, 749.3073, 749.3075, 749.3077, 749.3079, 749.3081, 749.3101, 749.3103, 749.3105, 749.3107, 749.3109, 749.3111, 749.3131, 749.3133, 749.3135, 749.3137, 749.3139, 749.3141, 749.3143, 749.3145, 749.3147, 749.3149, and 749.3151; and new §§749.801, 749.803, 749.805, 749.807, 749.821, 749.823, 749.825, 749.831, 749.901, 749.903, 749.905, 749.921, 749.923, 749.925, 749.927, 749.929, 749.931, 749.933, 749.935, 749.937, 749.951, 749.953, 749.955, 749.957, 749.959, 749.973, 749.975, 749.977, 749.1001, 749.1003, 749.1005, 749.1007, 749.1009, 749.1011, 749.1013, 749.1015, 749.1017, 749.1019, 749.1031, 749.1033, 749.1035, 749.1037, 749.1051, 749.1053, 749.1061, 749.1063, 749.1065, 749.1101, 749.1103, 749.1105, 749.1107, 749.1109, 749.1201, 749.1203, 749.1205, 749.1207, 749.1209, 749.1211, 749.1213, 749.1215, 749.1217, 749.1231, 749.1233, 749.1235, 749.1237, 749.1251, 749.1253, 749.1301, 749.1303, 749.1305, 749.1307, 749.1401, 749.1403, 749.1405, 749.1407, 749.1409, 749.1411, 749.1413, 749.1415, 749.1417, 749.1419, 749.1421, 749.1423, 749.1501, 749.1503, 749.1505, 749.1601, 749.1603, 749.1605, 749.1607, 749.1621, 749.1623, 749.1625, 749.1631, 749.1633, and 749.1635.

BACKGROUND AND PURPOSE

The purpose of this proposal is to (1) comply with Texas Human Resources Code (HRC) §42.042(b); (2) implement an HHSC initiative for reasonable regulatory reform stemming from HRC §42.027, created by Senate Bill (SB) 593, 88th Legislature, Regular Session, 2023; and (3) implement House Bill (HB) 1403, 89th Legislature, Regular Session, 2025.

HRC §42.042(b) requires HHSC Child Care Regulation (CCR) to conduct a comprehensive review of minimum standards at least once every six years. SB 593 requires HHSC to contract with an independent entity to assess HHSC rules, minimum standards, Texas Department of Family and Protective Services contract requirements, and standards or oversight requirement prescribed by law.

The purpose of the comprehensive review is to (1) identify any minimum standards that need clarification and to make amendments; (2) identify any minimum standards that may not have the intended outcome and amend or repeal those identified; and (3) ensure that minimum standards are consistent with current research, best practices, and other guidelines. This is also the purpose of reasonable regulatory reform; however, reasonable regulatory reform also identified opportunities to eliminate requirements that were outdated, redundant, or unnecessarily burdensome to providers and HHSC staff, while streamlining and improving requirements that are necessary to protect the health, safety, and well-being of children in foster care.

The purpose of HB 1403 is to ensure the confidentiality of foster homes related to firearms. HB 1403 prohibits HHSC or a child-placing agency (CPA) from requiring a foster home to (1) disclose the specific types of firearms that are present in the home; or (2) notify the CPA if there is any change in the types of firearms present in the home.

Additionally, the rules have been written in plain language to improve understanding and effectiveness of the rules.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Subchapter F, Training and Professional Development, consisting of §§749.801, 749.811, 749.813, 749.831, 749.833, 749.861, 749.863 - 749.865, 749.867 - 749.869, 749.881 - 749.883, 749.885, 749.887, 749.889, 749.911, 749.913, 749.915, 749.930, 749.931 - 749.933, 749.935, 749.937, 749.939, 749.941, 749.943, 749.944, 749.945, 749.947, and 749.949, deletes the subchapter and the rules it contains as the requirements have been consolidated into a new Subchapter F, Training Requirements.

Proposed new Subchapter F, Training Requirements, establishes training requirements for caregivers and employees.

Proposed new Division 1, Caregiver Training Requirements, in Subchapter F, establishes the training requirements that apply to caregivers.

Proposed new §749.801, Caregiver Pre-Verification Requirements, establishes the training requirements each caregiver must complete before a CPA can verify the foster home.

Proposed new §749.803, General Caregiver Training Requirements, establishes the general training requirements that at least one foster parent must complete before the CPA places a child in care in the foster home. The rule also establishes the training requirements and timeframe for completion for other caregivers in the foster home and allows the CPA to determine if emergency behavior intervention training is necessary based on the ages of the children in care of the home and the types of services provided.

Proposed new §749.805, Pediatric First Aid and Pediatric Cardiopulmonary Resuscitation (CPR) Requirements, requires one foster parent to be certified in pediatric first aid and pediatric CPR before the home's verification. The rule requires other caregivers to be certified within 90 days after the CPA issues the home's verification. The rule clarifies that the training must (1) include training related to rescue breathing and choking, and (2) adhere to guidelines for CPR established by the American Heart Association.

Proposed new §749.807, Additional Caregiver Training Requirements, establishes the additional training requirements for caregivers. The rule requires the CPA to evaluate the foster home for concerns at least once every year. If the CPA identifies concerns, the rule requires the CPA to provide all caregivers in the home with additional training appropriate to the identified concerns. The rule also requires the CPA to provide at least one hour of annual training to each foster parent who provides care to a child in care receiving treatment services.

Proposed new Division 2, Employee Training Requirements, in Subchapter F, establishes the training requirements that apply to CPA employees.

Proposed new §749.821, Employee Orientation Requirements, establishes orientation requirements for employees. The rule requires each employee to have orientation before beginning job duties that includes (1) an overview of the minimum standards in Chapter 749; (2) the CPA's structure, policies, and services; and (3) the needs and characteristics of the children the CPA serves.

Proposed new §749.823, New Employee Training Requirements, establishes the general new employee training requirements and timeframes for completion. The rule requires that within 30 days after the employee's start date, CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers complete training in normalcy, trauma informed care, preventing

the spread of communicable diseases, and emergency behavior intervention. The rule clarifies that there are certain exemptions for employees exclusively assigned responsibilities related to adoption services and employees exclusively assigned responsibilities related to the care of children in care receiving treatment services for primary medical needs. The rule requires employees defined as caregivers to obtain pediatric first aid and CPR training.

Proposed new §749.825, Employee Annual Training Requirements, establishes the annual employee training requirements. The rule requires child placement staff, child placement management staff, executive director, treatment directors, and CPA administrators to complete at least 15 hours of annual training. The rule specifies that at least one hour of the 15 required hours must cover prevention, recognition, and reporting of child abuse, neglect, and exploitation. The rule allows for a CPA to establish the method the CPA will use to track annual training.

Proposed new Division 3, Employee and Caregiver Training Documentation Requirements, in Subchapter F, contains requirements for documenting caregiver and employee training.

Proposed new §749.831, Employee and Caregiver Documentation of Required Trainings, establishes documentation requirements for caregiver and employee trainings. The rule requires the CPA to document if a training requirement is waived and how the CPA determined waiving the requirement was appropriate. It also requires that training certificates for pediatric first aid and pediatric CPR have an expiration date and be renewed before the expiration date.

The proposed repeal of Subchapter G, Children's Rights, consisting of 749.1001, 749.1003, 749.1005, 749.1007, 749.1009, 749.1011, 749.1013, 749.1015, 749.1017, 749.1019, and 749.1021, deletes the subchapter and the rules it contains as the requirements have been consolidated into new Subchapter L, Child Rights.

Proposed new Subchapter G, Foster Home Screenings and Verifications, establishes requirements for screening and verifying a foster home.

Proposed new Division 1, Foster Home Screenings, in Subchapter G, contains rules relating to the requirements for foster home screenings.

Proposed new §749.901, Foster Home Screenings, describes the specific categories of information the CPA must obtain, discuss, assess, and document through interviews with each prospective foster parent, joint interviews with prospective foster parents, and reference checks required in proposed new §749.903. The rule also requires a CPA to report any information obtained about domestic violence to CCR.

Proposed new §749.903, Required Interviews and Reference Checks, establishes the required interviews and reference checks that must be completed when a CPA conducts a home screening. The rule allows CPAs to skip certain interviews after showing they attempted to contact the individual at least three separate times.

Proposed new §749.905, Home Screening Documentation Requirements, establishes the documentation requirements for a home screening.

Proposed new Division 2, Foster Home Verification, in Subchapter G, establishes the requirements to verify a foster home.

Proposed new §749.921, General Requirements, establishes the general requirements for a foster home verification. The rule (1) requires foster parents to be at least 18 years old; (2) establishes circumstances when a CPA can verify an individual spouse as a foster parent; and (3) prohibits a foster home from being verified by more than one CPA at a time for foster care services.

Proposed new §749.923, Verifying a Foster Home, establishes steps the CPA takes to complete a foster home verification, including documentation requirements, interviews, and inspections. The rule also requires the CPA to obtain approval from the child placement management staff for the home screening and verification.

Proposed new §749.925, Temporary Foster Home Verifications, establishes requirements for a CPA to issue a temporary foster home verification.

Proposed new §749.927, Provisional Verifications, establishes requirements for a CPA to issue a provisional foster home verification.

Proposed new §749.929, Previously Verified Foster Homes, establishes requirements for working with foster homes that were previously verified by or transferring from another CPA.

Proposed new §749.931, Releasing Information About a Previously Verified Foster Home, establishes requirements for releasing information about a previously verified foster home. The rule requires a CPA to release background information about current and previous foster homes to other CPAs and independent contractors who are hired or required by the court.

Proposed new §749.933, Foster Home Verification Changes, establishes requirements for changing the verification status of a foster home. The rule (1) describes changes a CPA must inform CCR about within two business days; (2) requires that child placement management staff ensure that any additional services offered by a foster home do not create a conflict of care with children currently in the home; and (3) requires background checks and impact analysis when a foster home adds a new, unrelated household member.

Proposed new §749.935, Foster Homes that Provide Day Care, establishes requirements for foster homes that also provide day care.

Proposed new §749.937, Transferring or Closing a Foster Home, establishes the criteria for a transfer or closing summary for a foster home, including details for the summary and timeframes for completion.

Proposed new Division 3, Capacity and Supervision, in Subchapter G, establishes capacity limits for a foster home and supervision requirements.

Proposed new §749.951, Capacity and Child/Caregiver Ratio, establishes capacity limits for a foster home and the criteria a CPA must assess and document when determining a foster home's capacity.

Proposed new §749.953, Expanding Capacity of a Foster Home, establishes requirements for a CPA to approve a capacity of seven or eight children for a foster home.

Proposed new §749.955, Supervision, establishes supervision requirements at a foster home. The rule outlines the factors the CPA must consider when determining supervision needs for each child in care. The rule also addresses the caregiver's re-

sponsibilities and the information a caregiver must have when a child in care participates in an unsupervised childhood activity.

Proposed new §749.957, Supervision with Video Cameras, establishes the circumstances under which video cameras may be used for supervision.

Proposed new §749.959, Transitional Living Program Supervision, establishes supervision requirements for a transitional living program.

Proposed new Division 4, Babysitting, Overnight Care, and Respite Care, in Subchapter G, establishes requirements for babysitters, overnight care, and respite care providers.

Proposed new §749.973, Children in Care as Babysitters, establishes requirements for when a child, including a child in care, may act as a babysitter.

Proposed new §749.975, Respite Child-Care Services, establishes requirements for respite care services.

Proposed §749.977, Information Sharing with Babysitter, Overnight Care Provider, or Respite Care Providers, establishes the information that a CPA must share with a babysitter or provider.

The proposed repeal of Subchapter H, Foster Care Services: Admission and Placement, consisting of 749.1101, 749.1103, 749.1105, 749.1107, 749.1109, 749.1111, 749.1113, 749.1115, 749.1131, 749.1133, 749.1135, 749.1137, 749.1151, 749.1153, 749.1155, 749.1181, 749.1183, 749.1185, 749.1187, 749.1189, 749.1251, 749.1253, 749.1255, 749.1281, and 749.1291, deletes the subchapter and the rules it contains as the requirements have been consolidated into new Subchapter J, Admission and Placement.

Proposed new Subchapter H, Health and Safety Requirements, contains rules relating to health and safety, environment, space, and equipment in foster homes.

Proposed new Division 1, Physical Environment Safety, in Subchapter H, establishes requirements for the foster home's physical environment, fire and health inspections, emergency plans, animals, tobacco use, nutrition, and transportation.

Proposed new §749.1001, Physical Environment of a Foster Home, establishes requirements related to the safety of indoor and outdoor space and equipment. The rule requires the home to ensure that indoor and outdoor space and equipment does not pose a safety risk to a child in care. The rule also includes supervision requirements to prevent a child in care from having access to space or equipment that poses a safety risk to a child in care.

Proposed new §749.1003, Health Inspections, establishes requirements for health inspections or evaluations at a foster home. The rule describes who must conduct the inspection or evaluation and requires a home to correct deficiencies and comply with any conditions or restrictions.

Proposed new §749.1005, Fire Inspections, establishes requirements for fire inspections or evaluations at a foster home. The rule describes who must conduct the inspection or evaluation and requires a home to correct deficiencies and comply with any conditions or restrictions.

Proposed new §749.1007, Fire Safety, establishes fire safety requirements. The rule includes the places in a foster home where there must be a working smoke detector; a requirement for the home to have at least one non-expired and operational fire ex-

tinguisher that is accessible in an emergency; and that the home must ensure that exits to the home are not blocked.

Proposed new §749.1009, Emergency Plans, establishes requirements for a written plan that a foster home must have for handling potential disasters and emergencies, including fire and severe weather. The rule requires the CPA that verified the home to annually review and evaluate the plan with all caregivers and children in the care of the home.

Proposed new §749.1011, Animals, requires that any animals at a foster home do not pose a health or safety threat to children in care and that all pets are vaccinated according to state law against diseases that can transmit to humans.

Proposed new §749.1013, Tobacco and E-Cigarette Use, prohibits household members and visitors from smoking tobacco products, e-cigarettes, or vaporizers in the presence of children in care and inside the foster home or motor vehicle.

Proposed new §749.1015, Nutrition and Food Safety, establishes requirements for food and food safety at a foster home, including that (1) caregivers provide children in care with drinking water and food that is served in a safe and sanitary manner; and (2) all food items are stored in a manner that protects them from contamination, spoiling, insects, and rodents.

Proposed new §749.1017, Transportation, establishes requirements for transporting a child in care. The rule requires caregivers to (1) secure safe and reliable transportation; (2) make special provisions for transporting children in care who are non-ambulatory or non-mobile; and (3) secure each child in care in a safety seat or safety belt appropriate to their age, height, and weight.

Proposed new §749.1019, Documentation of Health and Safety Requirements, establishes health and safety requirements a CPA must document in a foster home's record.

Proposed new Division 2, Weapons, Firearms, Explosive Materials, and Projectiles, in Subchapter H, contains rules related to the use and presence of weapons, firearms, explosive materials, and projectiles.

Proposed new §749.1031, Weapons, Firearms, Explosive Materials, and Projectiles in a Foster Home, establishes requirements related to weapons, firearms, explosive materials, and projectiles in a foster home. The rule (1) requires each CPA to have a policy identifying specific precautions to ensure a child in care does not have unsupervised access to these items; and (2) requires the CPA to determine whether it is appropriate for a specific child in care to use a weapon, firearm, explosive material, or projectile or to use a toy that explodes or shoots.

Proposed new §749.1033, Storage of Weapons, Firearms, Explosive Materials, or Projectiles in a Foster Home, establishes factors the CPA must consider when determining if a weapon, firearm, explosive material, or projectile is stored adequately in a foster home. The rule specifies that a CPA may not require a foster home to disclose the specific types of firearms that are stored or otherwise present in the foster home, nor may a CPA require a foster home to notify the CPA if there is any change in the types of firearms present in the home. The rule exempts firearms that are inoperable and solely ornamental from storage requirements.

Proposed new §749.1035, Determining if Weapons, Firearms, Explosive Materials, or Projectiles are Present in a Foster Home, establishes how a CPA determines if weapons, firearms, ex-

plosive materials, and projectiles are present at a foster home. The rule requires the CPA to assess this information during the home screening and document (1) whether weapons, firearms, explosive materials, or projectiles are present in the home; and (2) specific precautions the caregiver must take to ensure that the children in care do not have unsupervised access. The rule specifies that a CPA may not require a foster home to disclose the specific types of firearms that are stored or otherwise present in the home or to notify the CPA if there is any change in the types of firearms present in the home. The rule further requires the CPA to discuss these items with the foster home during the annual evaluation.

Proposed new §749.1037, Transporting a Child in Care in a Vehicle Where Firearms, Weapons, Explosive Materials, or Projectiles are Present, establishes requirements for transporting a child in care in a vehicle where firearms, explosive materials, or projectiles are present. Due to the statutory requirements in HRC §42.042(e-2), the rule addresses requirements related to transporting a child in care in a vehicle where a handgun is present separately from the requirements related to transporting a child in care in a vehicle where another type of firearm or an explosive material or projectile is present.

Proposed new Division 3, Sleeping Space and Bathroom Requirements, in Subchapter H, contains rules relating to space and bathrooms.

Proposed new §749.1051, Indoor Space: Sleeping Spaces and Sleeping Surfaces, establishes requirements related to sleeping spaces and surfaces used by a child in care, as well as what CPMS must determine and document before approving a child in care to share a sleeping space or surface with another individual.

Proposed new §749.1053, Indoor Space: Bathrooms, describes bathroom requirements for a foster home.

Proposed new Division 4, Pools and Water Activities, in Subchapter H, contains rules relating to swimming pools and water activities.

Proposed new §749.1061, Water Safety: Pools, Hot Tubs, and Bodies of Water, establishes general safety rules for swimming pools, hot tubs, and bodies of water, including barriers and locks.

Proposed new §749.1063, Swimming Supervision, establishes supervision requirements for swimming activities.

Proposed new §749.1065, Swimming Ratios, establishes child-to-caregiver ratios when children in care are swimming.

The proposed repeal of Subchapter I, Foster Care Services: Service Planning, Discharge, consisting of 749.1301, 749.1305, 749.1307, 749.1309, 749.1311 - 749.1313, 749.1315, 749.1317, 749.1319, 749.1321, 749.1323, 749.1331, 749.1333, 749.1335 - 749.1337, 749.1339, 749.1361, 749.1363, 749.1365, 749.1367, 749.1369, 749.1371, 749.1373, and 749.1377, deletes the subchapter and the rules it contains as the requirements have been consolidated into new Subchapter K, Service Planning and Discharge.

Proposed new Subchapter I, Foster Home Management and Evaluation, establishes requirements for ongoing management and evaluation of foster homes.

Proposed new §749.1101, Foster Home Verification Change Management, requires a new or temporary verification to be issued to a foster home that experiences a change that invalidates the home's verification. The rule clarifies what changes automatically invalidate a home's verification.

Proposed new §749.1103, Foster Home Compliance Evaluation, establishes what a CPA evaluates to assess a foster home's ongoing compliance. The rule establishes the steps a CPA must take if a deficiency is noted during an evaluation.

Proposed new §749.1105, Foster Home Supervisory Visits, establishes the requirements for supervisory visits to a foster home, including how often the supervisory visits must be completed, who must be present, and what must be evaluated.

Proposed new §749.1107, Inactive Foster Homes, establishes requirements for foster homes to be placed on inactive status and requirements to become active again.

Proposed new §749.1109, Ongoing Monitoring Documentation Requirements, establishes documentation requirements for the ongoing monitoring of a foster home. The rule specifies documentation requirements for when a CPA is evaluating the home for compliance or completing a supervisory visit and when a home is placed on or removed from inactive status.

The proposed repeal of Subchapter J, Foster Care Services: Medical and Dental, consisting of 749.1401, 749.1403, 749.1405, 749.1409, 749.1411, 749.1413, 749.1415, 749.1417, 749.1421, 749.1423, 749.1425, 749.1427, 749.1429, 749.1431, 749.1433, 749.1435, 749.1437, 749.1461, 749.1463, 749.1469, 749.1501, 749.1503, 749.1521, 749.1541, 749.1543, 749.1545, 749.1561, 749.1563, 749.1565, 749.1581, 749.1583, 749.1603, 749.1605, 749.1607, 749.1609, 749.1611, 749.1641, 749.1643, 749.1645, 749.1647, 749.1671, 749.1673, and 749.1675, deletes the subchapter and the rules it contains as the requirements have been consolidated into new Subchapter M, Medical and Dental Requirements.

Proposed new Subchapter J, Admission and Placement, establishes requirements for admission and placement.

Proposed new §749.1201, Admission Criteria, establishes that a CPA may admit a child or young adult into care who meets the CPA's admission policy.

Proposed new §749.1203, Initial Requirements at the Time of Admission or Verification, establishes the initial admission information that a CPA must attempt to obtain when admitting a child into the care of a foster home. It requires the CPA to provide the prospective caregivers with the initial admission information within 24 hours after the date of admission.

Proposed new §749.1205, Admission Assessment, establishes the information that a CPA must obtain when completing the admission assessment. The rule requires the admission assessment to be complete within 15 days after the date of a child's admission and requires the admission assessment to be provided to the caregivers and professional service providers within five days after the assessment is completed. The rule also establishes additional admission assessment criteria for children in care who receive treatment services for primary medical needs.

Proposed new §749.1207, Admission Orientation Requirements, requires the CPA to provide orientation to each child five years of age or older in care within seven days of admission. The rule requires orientation to include information about the CPA's child-care policies.

Proposed new §749.1209, Placement Agreement, establishes requirements for the placement agreement. The rule requires the placement agreement to define the CPA's roles and responsibilities and authorizes the CPA to obtain or provide services for the child in care.

Proposed new §749.1211, Pre-Placement Requirements, establishes requirements the CPA must complete with the child in care before placing the child in a foster home: (1) discuss the reason for the placement with the child in care; (2) visit the foster home at least once if the child in care is over six months old; (3) observe the interactions between the child in care and household members; and (4) meet privately and separately with the child in care and foster parents to discuss placement after the visit.

Proposed new §749.1213, Post-Placement Contacts, requires the CPA staff to have monthly in-person visits with the child in care. The rule requires that this visit must occur in the foster home every other month and establishes what must take place during the visit.

Proposed new §749.1215, Ongoing Placement of Young Adults, establishes requirements for young adults to remain in care at a foster home.

Proposed new §749.1217, Admission and Placement Information Documentation, establishes documentation requirements for admission and placement of children into the care of a foster home.

Proposed new Subchapter K, Service Planning and Discharge, establishes requirements related to service planning and discharge.

Proposed new Division 1, Service Planning, establishes requirements related to service planning.

Proposed new §749.1231, General Service Plan Requirements, establishes the general requirements for a service plan. The rule allows the CPA to use the child's most recent service plan developed by the agency that referred the child for placement, or for the CPA to complete a service plan and subsequent reviews.

Proposed new §749.1233, Initial Service Plan Requirements, establishes requirements for the service planning team to complete an initial service plan, including the specific needs that must be identified and addressed. The rule has additional requirements for children in care that receive treatment services. The rule requires the initial service plan to be completed within 60 days after the child is admitted into care and reviewed at least every 180 days after the date of the last service plan.

Proposed new §749.1235, Service Plan Requirements for Children in Care Receiving Treatment Services, requires the CPA to obtain a psychosocial assessment, or equivalent assessment or evaluation, for each child in care receiving treatment services for emotional disorders, autism spectrum disorders, or intellectual disabilities. The rule establishes a timeframe for the assessment to be completed.

Proposed new §749.1237, Service Plan Documentation Requirements, establishes the documentation requirements for the service plan and psychosocial assessment.

Proposed new Division 2, Discharge and Transfer Planning, in Subchapter K, establishes requirements related to discharge and transfer for a child in care.

Proposed new §749.1251, Discharge and Transfer Requirements, establishes requirements for discharging or transferring a child in care. The rule establishes who a child in care can be discharged to and the information that must be shared with that individual and outlines the CPA's responsibilities for discharging or transferring a child in care, including the requirements for a discharge or transfer summary.

Proposed new §749.1253, Discharge and Transfer Documentation Requirements, establishes what the CPA must document when completing a discharge or transfer.

The proposed repeal of Subchapter K, Foster Care Services: Daily Care, Problem Management, deletes the subchapter and the rules it contains as the requirements have been consolidated into proposed new Subchapter M, Daily Care, Education, and Discipline.

Proposed new Subchapter L, Child Rights, consisting of §§749.1301, 749.1303, 749.1305, and 749.1307, establishes the rights guaranteed to children in care and the CPA's responsibilities for ensuring the rights of a child in care are not violated.

Proposed new §749.1301, Child-Placing Agency Responsibilities Related to Child Rights, establishes the CPA's responsibilities related to child rights for a child in care. The rule requires the CPA to (1) protect rights of a child in care; (2) remove a child in care from situations where abuse, neglect, or exploitation exists; (3) review the child's rights with the child in care and the child's parent; and (4) ensure child's rights are written in plain language that can be understood by the individual they are reviewed with.

Proposed new §749.1303, Child Rights, establishes the child's rights that a CPA must adhere to: (1) safety and care; (2) family contacts; (3) living a normal life; (4) discipline; (5) plans for the child while in care of the CPA; (6) medical care and records; and (7) making complaints.

Proposed new §749.1305, Conducting Searches for Items that Endanger a Child's Safety, establishes requirements for an employee or caregiver conducting searches for items that endanger the safety of a child in care. The rule specifies when a search can be conducted, who can conduct the search, and prohibits body cavity searches.

Proposed new §749.1307, Child Rights Documentation Requirements, establishes documentation requirements for review of a child's rights, plans for contact between a child in care and the family of the child in care, and the results of specific searches involving a child in care.

The proposed repeal of Subchapter L, Foster Care Services: Emergency Behavior Intervention, consisting of 749.2001, 749.2051, 749.2053, 749.2055, 749.2059, 749.2061, 749.2063, 749.2101, 749.2103, 749.2105, 749.2107, 749.2151, 749.2153, 749.2201, 749.2203, 749.2205, 749.2231, 749.2233, 749.2281, 749.2283, 749.2301, 749.2303, 749.2305, 749.2307, 749.2331, 749.2333, 749.2335, 749.2337, 749.2339, 749.2381, and 749.2383, deletes the subchapter and the rules it contains as the requirements have been consolidated into proposed new Subchapter O, Emergency Behavior Intervention Requirements.

Proposed new subchapter M, Daily Care, Education, and Discipline, contains rules relating to the daily care, education, and discipline of children in care.

Proposed new §749.1401, Infants: Basic Care and Supervision, establishes basic care and supervision requirements for infants in a foster home. The rule establishes (1) that infants must receive individual and prompt attention; (2) environmental requirements, including (A) keeping the area free of harmful objects, including diaper changing items, and (B) ensuring electrical outlets are inaccessible; and (3) that an infant may never be left unsupervised. The rule defines infant supervision requirements and what is considered supervision for a sleeping infant and an awake infant.

Proposed new §749.1403, Infants: Cribs, establishes crib requirements for infants. The rule (1) requires a foster home to have an individual crib that meets certain requirements for an infant; (2) clarifies when the home may use a portable or mesh-side crib; (3) prohibits (A) using a stackable crib for an infant, and (B) leaving an infant in a portable crib or mesh-side crib with a side folded down; (4) clarifies that special items may be used to assist with safe sleep in a crib used by an infant with primary medical needs with the written recommendation from a health care professional; and (5) requires the CPA to notify the parent of each child in care of each foster home verified by the CPA if specific rules in the rule are cited as deficient.

Proposed new §749.1405, Infants: Safe Sleep Requirements, establishes safe sleep requirements for infants. The rule requires caregivers to (1) place an infant who is unable to roll over without help on the infant's back to sleep unless a health care professional orders otherwise; (2) ensure the infant's head, face, and crib are not covered by any item; (3) ensure the infant does not (A) co-sleep with an individual, or (B) sleep in a restrictive device, such as a car seat, swing, or highchair; and (4) ensure swaddling is only used for infants who cannot roll over without help. The rule requires the CPA to notify the parent of each child in care of each foster home verified by the CPA if specific rules in the rule are cited as deficient.

Proposed new §749.1407, Infants: Equipment Safety, establishes equipment safety requirements for infants.

Proposed new §749.1409, Infants: Feeding Requirements, establishes feeding requirements for infants. The rule requires caregivers to (1) feed an infant based on the recommendations of the infant's health-care professional; (2) hold infants birth through six months of age or unable to sit unassisted while feeding; (3) never prop a bottle with anything other than the infant's or adult's hands; and (4) sterilize shared bottles and clean highchair trays before each use when caring for more than one infant.

Proposed new §749.1411, Toddlers: Basic Care Requirements, establishes basic care requirements for toddlers. The rule includes (1) environmental requirements, including (A) keeping the area free of harmful objects, and (B) ensuring electrical outlets are inaccessible; and (2) supervision requirements, including (A) never leaving a toddler unsupervised, and (B) ensuring the toddler is within eyesight or hearing range. The rule allows for the use of video camera or audio monitoring if the caregiver is close enough to intervene as needed.

Proposed new §749.1413, Additional Requirements for Pregnant Children in Care, establishes additional requirements for children in care who are pregnant. The rule requires the CPA to ensure information, training, and counseling is available to the child in care.

Proposed new §749.1415, Additional Requirements for Children in Care Receiving Treatment Services for Primary Medical Needs or Intellectual Disabilities, establishes additional requirements for children in care receiving treatment services for primary medical needs or intellectual disabilities. The rule requires caregivers to (1) follow recommendations from the medical providers for a child in care; and (2) ensure that a child in care receiving treatment services for primary medical needs, or an intellectual disability, has opportunities for physical and sensory stimulation.

Proposed new §749.1417, Discipline and Punishment, establishes discipline and punishment requirements in a foster home.

The rule requires that (1) only a caregiver known to a child in care can discipline the child; and (2) all disciplinary measures be consistent with child's rights related to discipline and punishment.

Proposed new §749.1419, Normalcy and Reasonable and Prudent Parent Requirements, requires a foster parent use the reasonable and prudent parent standard to ensure a child in care can participate in childhood activities, including unsupervised activities, which are appropriate in relation to the age and developmental needs of the child in care.

Proposed new §749.1421, Educational Services: General, establishes general educational requirements for children in care. The rule requires the CPA to arrange appropriate education that includes an approved or accredited educational facility or program, and to advocate for a child in care to receive educational and related services to which they are entitled under federal and state law. The rule also requires the CPA to designate a liaison between the CPA and the school for a child in care who receives treatment services.

Proposed new §749.1423, Educational Services: Caregiver Responsibilities, establishes caregiver responsibilities related to education. The rule requires caregivers to (1) request educational meetings with the school if concerns are identified; (2) attend scheduled educational meetings and conferences; and (3) know what is in the Individual Education Plan or Individual Transitional Planning for a child in care.

The proposed repeal of Subchapter M, Foster Homes: Screenings and Verifications, consisting of 749.2401, 749.2403, 749.2405, 749.2407, 749.2445, 749.2447, 749.2449, 749.2451, 749.2453, 749.2470, 749.2473, 749.2475, 749.2477, 749.2479, 749.2481, 749.2483, 749.2485, 749.2487 - 749.2489, 749.2491, 749.2493, 749.2495, 749.2497, 749.2520, 749.2521, 749.2523, 749.2525 - 749.2527, 749.2529, 749.2531, 749.2533, 749.2535, 749.2537, 749.2539, 749.2550, 749.2551, 749.2555, 749.2557, 749.2591, 749.2593, 749.2595, 749.2597, 749.2599, 749.2601, 749.2603, 749.2605, 749.2607, 749.2621, 749.2623, 749.2625, 749.2627, 749.2629, 749.2631, 749.2633, 749.2635, 749.2651, 749.2653, and 749.2655, deletes the subchapter and the rules it contains as the requirements have been consolidated into proposed new Subchapter G, Foster Home Screenings and Verifications.

Proposed new Subchapter N, Medical and Dental Requirements, establishes the requirements for the medical and dental care of a child in care.

Proposed new §749.1501, General Medical, Dental, and Medication Requirements, establishes medical, dental and medication requirements for children in care. The rule requires children in care to have (1) timely routine, emergency, and follow-up care; (2) verification of previous medical and dental exams at admission; and (3) medication administered only by an individual who is trained and authorized. The CPA must ensure caregivers follow orders and recommendations from physicians and other health-care professionals and store medication according to the label's instructions and inaccessible to children in care.

Proposed new §749.1503, Immunizations Requirements, requires the CPA to ensure each child in care meets applicable immunization requirements as specified by the Texas Department of State Health Services.

Proposed new §749.1505, Documentation Requirements for Medical and Dental Care, establishes the documentation re-

quirements for medical and dental care. The rule requires the CPA to maintain documentation of emergency medical and dental visits, immunizations, known contraindicated medications, and insertion of a nasogastric tubes. The rule also requires the foster home to maintain (1) a daily medication log for all prescription medications and any non-prescription medications administered to someone under the age of five, and (2) a record of all medication errors, adverse reactions, and side effects.

The proposed repeal of Subchapter N, Foster Homes: Management and Evaluation, consisting of 749.2801, 749.2803, 749.2805, 749.2807, 749.2809, 749.2811, 749.2813 - 749.2815, 749.2817, 749.2819, 749.2821, 749.2823, 749.2825, and 749.2901 - 749.2905, deletes the subchapter and the rules it contains as the requirements have been consolidated into proposed new Subchapter H, Health and Safety Requirements.

Proposed new Subchapter O, Emergency Behavior Intervention Requirements, establishes requirements for a CPA that allows the use of emergency behavior intervention (EBI).

Proposed new Division 1, Administering Emergency Behavior Intervention, in Subchapter O, establishes requirements for caregivers when administering EBI.

Proposed new §749.1601, Types of Emergency Behavior Intervention (EBI), establishes that a CPA must use a method of EBI that is recognized by CCR. The rule states that EBI may only be used in a situation when preventative de-escalation and redirection was not effective. The rule establishes when a caregiver can use personal restraints, short personal restraints, and emergency medication, and prohibits the use of chemical restraints, mechanical restraints, or seclusion.

Proposed new §749.1603, Administering Emergency Behavior Intervention (EBI) Requirements, requires that during a restraint the caregiver must (1) use the minimal amount of reasonable and necessary physical force, (2) protect the health, safety, and well-being of a child in care, and (3) explain to the child in care what the child needs to do to be released from the personal restraint or short personal restraint.

Proposed new §749.1605, Restraint Minimum Safety Requirements, establishes safety requirements for all personal and short personal restraints. The rule addresses breathing, positioning, and release requirements. The rule requires that the child in care be released after the danger is averted, when the external hazard is no longer present, or when the maximum timeframe is reached.

Proposed new §749.1607, Written Orders for Emergency Medication and Combinations of Emergency Behavior Intervention, establishes that a caregiver may not administer emergency medication or combinations of emergency behavior interventions to a child in care without a written order from a licensed physician or licensed psychiatrist. The rule states the written orders must be given to the parent and all the caregivers of a child in care.

Proposed new Division 2, Follow-Up Actions and Documentation, in Subchapter O, establishes follow-up actions and documentation that must be completed following the implementation of a personal restraint or use of emergency medication.

Proposed new §749.1621, Restraint and Emergency Medication Follow-Up Actions Requirements, establishes how a caregiver must monitor a child in care following use of a personal restraint or emergency medication. The rule establishes topics that must be discussed during the post-intervention discussion. The rule

also requires the caregiver to debrief with the child placement staff within 72 hours after the incident.

Proposed new §749.1623, Restraint and Emergency Medication Documentation Requirements, establishes the criteria that caregivers must document following the use of a personal restraint or emergency medication.

Proposed new §749.1625, Post-Restraint and Emergency Medication Parental Notification Requirements, requires a CPA to notify the parent of a child in care no later than 72 hours after a personal restraint or emergency medication is administered. The notification must be written and maintained in the record of the child in care. The rule establishes what must be included in the notice.

Proposed new Division 3, Triggered Reviews and Annual Operation Evaluation, in Subchapter O, establishes a CPA's responsibilities when completing a triggered review and annual review.

Proposed new §749.1631, Triggered Reviews General Requirements, requires a CPA to complete a triggered review of the placement, service plan, and orders or recommendations for EBI for a child in care based on how many times and how frequently the child in care is restrained. The rule establishes that after four triggered reviews in a 90-day period the child in care must be examined by a mental health professional and the CPA must follow the mental health professional's recommendations.

Proposed new §749.1633, Triggered Reviews Documentation Requirements, establishes documentation requirements when a triggered review is completed. The rule requires the documentation to be maintained in the record of the child in care.

Proposed new §749.1635, Annual Operation Evaluation, requires the CPA to conduct an annual operation evaluation to determine that EBI is administered safely, appropriately, and effectively. The rule establishes review and documentation requirements during the annual operation evaluation and reporting requirements to CCR.

The proposed repeal of Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment, consisting of 749.2901 - 749.2905, 749.2907 - 749.2909, 749.2911, 749.2913, 749.2915, 749.2917, 749.2931, 749.2961, 749.2963, 749.2965, 749.2967, 749.3021, 749.3023, 749.3025, 749.3027, 749.3029, 749.3031, 749.3033, 749.3035, 749.3037, 749.3039, 749.3041, 749.3043, 749.3061, 749.3063, 749.3065, 749.3067, 749.3069, 749.3071, 749.3073, 749.3075, 749.3077, 749.3079, 749.3081, 749.3101, 749.3103, 749.3105, 749.3107, 749.3109, 749.3111, 749.3131, 749.3133, 749.3135, 749.3137, 749.3139, 749.3141, 749.3143, 749.3145, 749.3147, 749.3149, and 749.3151, deletes the subchapter and the rules it contains as the requirements have been consolidated into proposed new Subchapter H, Health and Safety Requirements.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new regulations;
- (6) the proposed rules will repeal existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect the public benefit will be (1) regulatory requirements that reflect current research, best practices, and guidelines around child safety and well-being, and confidentiality; (2) elimination of requirements that are outdated, redundant, or unnecessarily burdensome; (3) streamlined and improved requirements that are necessary to protect the health, safety and well-being of children; and (4) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose fees and are an overall reduction in regulatory oversight and requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail

Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R029" in the subject line.

SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 1. DEFINITIONS

26 TAC §749.801

STATUTORY AUTHORITY

The repealed section is authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed section affects Texas Government Code §524.0151 and HRC §42.042.

§749.801. What do certain words and terms mean in this subchapter?
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



DIVISION 2. OVERVIEW OF TRAINING AND EXPERIENCE REQUIREMENTS

26 TAC §749.811, §749.813

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to

carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.811. What are the training and experience requirements for a caregiver?

§749.813. What are the training requirements for an employee?

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

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DIVISION 3. ORIENTATION

26 TAC §749.831, §749.833

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.831. What is the orientation requirement for caregivers and employees?

§749.833. When may a caregiver or employee be exempt from orientation?

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

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DIVISION 4. PRE-SERVICE EXPERIENCE AND TRAINING

26 TAC §§749.861, 749.863 - 749.865, 749.867 - 749.869

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.861. *What are the pre-service experience requirements for caregivers?*

§749.863. *What are the pre-service training requirements for a caregiver?*

§749.864. *What are the pre-service training requirements for an employee?*

§749.865. *Can time spent in orientation training count towards pre-service training?*

§749.867. *What caregivers or employees are exempt from certain pre-service training requirements?*

§749.868. *Can a child-placing agency waive pre-service training requirements for a foster parent?*

§749.869. *How must pre-service training be conducted?*

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

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DIVISION 5. CURRICULUM COMPONENTS FOR PRE-SERVICE TRAINING

26 TAC §§749.881 - 749.883, 749.885, 749.887, 749.889

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.881. *What curriculum components must be included in the general pre-service training?*

§749.882. *What curriculum components must be included in the pre-service training for normalcy?*

§749.883. *What curriculum components must be included in the pre-service training for safe sleeping?*

§749.885. *What curriculum components must be included in the pre-service training for administering psychotropic medication?*

§749.887. *If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?*

§749.889. *If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?*

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DIVISION 6. PEDIATRIC FIRST AID AND PEDIATRIC CPR CERTIFICATION

26 TAC §§749.911, 749.913, 749.915

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.911. *Who must have pediatric first aid and pediatric CPR training?*

§749.913. *Are there any exemptions from pediatric first aid and pediatric CPR certification?*

§749.915. *What documentation must I maintain for pediatric first-aid and pediatric CPR certifications?*

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

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DIVISION 7. ANNUAL TRAINING

26 TAC §§749.930 - 749.933, 749.935, 749.937, 749.939

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.930. What are the annual training requirements for a caregiver?

§749.931. What are the annual training requirements for an employee?

§749.932. What exemptions or waivers may apply to the annual training requirements for a caregiver?

§749.933. When must an employee or caregiver complete the annual training?

§749.935. What types of hours or instruction can be used to complete the annual training requirements?

§749.937. Does Licensing approve training resources or trainers for annual training hours?

§749.939. How must annual training be conducted?

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

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DIVISION 8. TOPICS AND CURRICULUM COMPONENTS FOR ANNUAL TRAINING

26 TAC §§749.941, 749.943 - 749.945, 749.947, 749.949

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision

of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.941. What areas or topics are appropriate for annual training?

§749.943. What curriculum components must be included in the annual training for normalcy?

§749.944. What curriculum components must be included in the annual training for employees on the prevention, recognition, and reporting of child abuse, neglect, and exploitation?

§749.945. What curriculum components must be included in the annual training for administering psychotropic medication?

§749.947. What curriculum components must be included in the annual training for emergency behavior intervention?

§749.949. What documentation must I maintain for annual training?

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

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SUBCHAPTER G. CHILDREN'S RIGHTS

26 TAC §§749.1001, 749.1003, 749.1005, 749.1007, 749.1009, 749.1011, 749.1013, 749.1015, 749.1017, 749.1019, 749.1021

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1001. How must I protect the rights of children served by my child-placing agency?

§749.1003. What rights does a child in care have?

§749.1005. How must I inform a child and the child's parents of their rights?

§749.1007. What are a child's rights regarding education?

§749.1009. What right does a child have regarding contact with a parent?

§749.1011. *What right does a child have regarding contact with siblings?*

§749.1013. *What right to privacy does a child have with respect to his contact with others?*

§749.1015. *Under what circumstances may I conduct a search for prohibited items or items that endanger a child's safety?*

§749.1017. *May a caregiver conduct a body cavity search of a child in care?*

§749.1019. *What must a caregiver document regarding a search?*

§749.1021. *What techniques am I prohibited from using on a child?*

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

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SUBCHAPTER H. FOSTER CARE SERVICES:

ADMISSION AND PLACEMENT

DIVISION 1. ADMISSIONS

26 TAC §§749.1101, 749.1103, 749.1105, 749.1107, 749.1109, 749.1111, 749.1113, 749.1115

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1101. *Who may I admit?*

§749.1103. *After a child in my care turns 18 years old, may the person remain in my care?*

§749.1105. *May I admit a young adult into care?*

§749.1107. *What information must I document in the child's record at the time of admission?*

§749.1109. *What is a placement agreement?*

§749.1111. *What orientation must I provide a child?*

§749.1113. *What information must I share with the parent at the time of placement?*

§749.1115. *What information must I provide caregivers when I admit a child?*

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

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DIVISION 2. ADMISSION ASSESSMENT

26 TAC §§749.1131, 749.1133, 749.1135, 749.1137

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1131. *When must I complete the admission assessment?*

§749.1133. *What information must an admission assessment include?*

§749.1135. *What are the additional admission assessment requirements when I admit a child for treatment services?*

§749.1137. *What if I cannot obtain the required information for an admission assessment?*

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

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DIVISION 3. REQUIRED ADMISSION INFORMATION

26 TAC §§749.1151, 749.1153, 749.1155

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to

carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1151. *What are the medical requirements when I admit a child into care?*

§749.1153. *What are the dental requirements when I admit a child into care?*

§749.1155. *What must I document when I re-admit a child for care?*

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

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DIVISION 4. EMERGENCY ADMISSION

26 TAC §§749.1181, 749.1183, 749.1185, 749.1187, 749.1189

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1181. *For which of my programs may I accept emergency admissions?*

§749.1183. *What constitutes an emergency admission to my child-placing agency?*

§749.1185. *May I take possession of a child from a law enforcement officer?*

§749.1187. *For an emergency admission, when must I complete all of the requirements for an admission assessment?*

§749.1189. *At the time of an emergency admission, what information must I document in the child's record?*

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

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Karen Ray

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DIVISION 5. FOSTER CARE PLACEMENT

26 TAC §§749.1251, 749.1253, 749.1255

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1251. *What are the requirements for pre-placement visits for a child?*

§749.1253. *What must staff do to prepare a child for a placement?*

§749.1255. *What information from an admission assessment must I share with the caregivers responsible for the child's care?*

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

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DIVISION 6. SUBSEQUENT PLACEMENT

26 TAC §749.1281

STATUTORY AUTHORITY

The repealed section is authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed section affects Texas Government Code §524.0151 and HRC §42.042.

§749.1281. *What are the requirements when I move a child from one foster home to another?*

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

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DIVISION 7. POST-PLACEMENT CONTACT

26 TAC §749.1291

STATUTORY AUTHORITY

The repealed section is authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed section affects Texas Government Code §524.0151 and HRC §42.042.

§749.1291. What are the requirements for contact between child placement staff and children in foster care?

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

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SUBCHAPTER I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE

DIVISION 1. SERVICE PLANS

26 TAC §§749.1301, 749.1305, 749.1307, 749.1309, 749.1311 - 749.1313, 749.1315, 749.1317, 749.1319, 749.1321, 749.1323

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and

Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1301. What are the requirements for a preliminary service plan?

§749.1305. Who must be involved in developing the preliminary service plan?

§749.1307. When must I complete an initial service plan?

§749.1309. What must a child's initial service plan include?

§749.1311. Who must be involved in developing an initial service plan?

§749.1312. Can the service planning team discuss and develop a child's service plan in separate meetings?

§749.1313. When must I inform the child's parents and foster parents of an initial service plan meeting?

§749.1315. Must a professional service provider or a professional who must participate in a child's service plan be an employee of my agency?

§749.1317. What roles do professional service providers have in service planning?

§749.1319. What must I document regarding a professional service provider's participation in the development of an initial service plan?

§749.1321. With whom do I share the initial service plan?

§749.1323. When must I implement a service plan?

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

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DIVISION 2. SERVICE PLAN REVIEW AND UPDATES

26 TAC §§749.1331, 749.1333, 749.1335 - 749.1337, 749.1339

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1331. *How often must I review and update a service plan?*
§749.1333. *How does a child's transfer affect the timing of the review of the child's service plan?*
§749.1335. *How do I review and update a service plan?*
§749.1336. *Can the child-placing agency continue to review and update a child's previous service plan without creating a new service plan?*
§749.1337. *Are the notification, participation, implementation, and documentation requirements for a service plan review and update the same as for an initial service plan?*

§749.1339. *How often must I re-evaluate the intellectual functioning of a child receiving treatment services for intellectual disabilities?*
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 3. DISCHARGE AND TRANSFER PLANNING

26 TAC §§749.1361, 749.1363, 749.1365, 749.1367, 749.1369, 749.1371, 749.1373, 749.1377

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1361. *What does a "transfer" of a child in care mean?*

§749.1363. *Who must plan a child's non-emergency discharge or transfer?*

§749.1365. *May a foster home release a child to any person without my consent?*

§749.1367. *To whom can I discharge a child in a non-emergency situation?*

§749.1369. *How do I discharge or transfer a child who is an immediate danger to self or others?*

§749.1371. *What must I document in the child's record at the time of a discharge or transfer?*

§749.1373. *When I discharge a child, what information must I provide to the next placement or caregiver?*

§749.1377. *What constitutes an emergency discharge or transfer?*

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SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL

DIVISION 1. MEDICAL AND DENTAL CARE

26 TAC §§749.1401, 749.1403, 749.1405, 749.1409, 749.1411, 749.1413, 749.1415, 749.1417, 749.1421, 749.1423, 749.1425, 749.1427, 749.1429, 749.1431, 749.1433, 749.1435, 749.1437

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1401. *What general medical requirements must my agency meet?*

§749.1403. *Who determines the need and frequency for ongoing maintenance of medical care and treatment for a child?*

§749.1405. *Who must perform medical care examinations and provide medical treatment for a child?*

§749.1409. *What general dental requirements must my agency meet?*

§749.1411. *Who must determine the frequency and need for ongoing maintenance of dental health for a child?*

§749.1413. *Who must perform dental examinations and provide dental treatment?*

§749.1415. *What health precautions must I take if a person in care, employee, caregiver, someone else in one of my foster homes, or someone else in my agency has a communicable disease?*

§749.1417. *Who must have a tuberculosis (TB) examination?*

§749.1421. *What immunizations must a child in my care have?*

§749.1423. *What exemptions or exceptions are there concerning immunization requirements?*

§749.1425. *What documentation is acceptable for an immunization record?*

§749.1427. *Must children in my care have a vision and hearing screening?*

§749.1429. *What must I do if a child in my care is identified as needing a diagnostic vision or hearing examination?*

§749.1431. *What special equipment must I provide for a child with a physical disability?*

§749.1433. *How often must the physician review a child's primary medical needs?*

§749.1435. *What are the requirements for using a nasogastric tube?*

§749.1437. *How must a caregiver respond when a child is injured or ill and requires immediate treatment by a health-care professional?*

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

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DIVISION 2. ADMINISTRATION OF MEDICATION

26 TAC §§749.1461, 749.1463, 749.1469

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1461. *What consent must I obtain to administer medications?*

§749.1463. *What are the requirements for administering prescription medication?*

§749.1469. *What are the requirements for administering non-prescription medication and supplements?*

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

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DIVISION 3. SELF-ADMINISTRATION OF MEDICATION

26 TAC §749.1501, §749.1503

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1501. *What are the requirements for a self-medication program?*

§749.1503. *Who must record the medication dosage if the child is on a self-medication program?*

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

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DIVISION 4. MEDICATION STORAGE AND DESTRUCTION

26 TAC §749.1521

STATUTORY AUTHORITY

The repealed section is authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed section affects Texas Government Code §524.0151 and HRC §42.042.

§749.1521. *What medication storage and destruction requirements must a foster home meet?*

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

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DIVISION 5. MEDICATION RECORDS

26 TAC §§749.1541, 749.1543, 749.1545

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1541. What records must caregivers maintain for each child receiving medication?

§749.1543. Where must a child's medication records be maintained?

§749.1545. What other requirements must I meet regarding medication records?

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

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DIVISION 6. MEDICATION AND LABEL ERRORS

26 TAC §§749.1561, 749.1563, 749.1565

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1561. What is a medication error?

§749.1563. What must a caregiver do if the caregiver finds a medication error?

§749.1565. What must a caregiver do if the caregiver finds a medication label error?

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

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DIVISION 7. SIDE EFFECTS AND ADVERSE REACTIONS TO MEDICATION

26 TAC §§749.1581, §749.1583

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1581. What must a caregiver do if a child has an adverse reaction to a medication?

§749.1583. What must a caregiver do if a child experiences side effects from any medications?

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DIVISION 8. USE OF PSYCHOTROPIC MEDICATION

26 TAC §§749.1603, 749.1605, 749.1607, 749.1609, 749.1611

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1603. *If my agency employs or contracts with a health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give consent before requesting his consent for the child to be placed on psychotropic medication?*

§749.1605. *If my agency does not employ or contract with the health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give medical consent prior to the health-care professional prescribing psychotropic medications to a child in care?*

§749.1607. *What are the requirements if a physician orders administration of a psychotropic medication to a child in an emergency?*

§749.1609. *What information must be documented about a child's use of psychotropic medication?*

§749.1611. *If my agency employs or contracts with a health-care professional who prescribes psychotropic medications to a child in care, what are the requirements for evaluating whether a child should continue taking a psychotropic medication?*

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

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DIVISION 9. PROTECTIVE DEVICES

26 TAC §§749.1641, 749.1643, 749.1645, 749.1647

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1641. *What is a protective device?*

§749.1643. *What does "involuntary self-injurious behavior" mean when used in this division?*

§749.1645. *May I use protective devices?*

§749.1647. *Who may use PRN orders with respect to protective devices?*

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DIVISION 10. SUPPORTIVE DEVICES

26 TAC §§749.1671, 749.1673, 749.1675

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1671. *What is a supportive device?*

§749.1673. *May I use supportive devices?*

§749.1675. *Who may use PRN orders with respect to supportive devices?*

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SUBCHAPTER K. FOSTER CARE SERVICES:
DAILY CARE, PROBLEM MANAGEMENT
DIVISION 1. ADDITIONAL REQUIREMENTS
FOR INFANT CARE

26 TAC §§749.1801, 749.1803, 749.1805, 749.1807,
749.1809, 749.1811, 749.1813, 749.1815, 749.1817, 749.1819,
749.1821

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

- §749.1801. *What do certain words mean in this division?*
§749.1803. *What are the basic care requirements for an infant?*
§749.1805. *What furnishings and equipment must I have in an infant care area?*
§749.1807. *What specific safety requirements must my cribs meet?*
§749.1809. *Are mesh cribs or port-a-cribs allowed?*
§749.1811. *What equipment must have safety straps before I can use it with an infant?*
§749.1813. *What types of equipment may a foster home not use with infants?*
§749.1815. *What are the specific sleeping requirements for infants?*
§749.1817. *May I allow an infant to sleep in a restrictive device?*
§749.1819. *What are the specific requirements for feeding an infant?*
§749.1821. *May I swaddle an infant to help the infant sleep?*

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DIVISION 2. ADDITIONAL REQUIREMENTS
FOR TODDLER CARE

26 TAC §749.1841

STATUTORY AUTHORITY

The repealed section is authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed section affects Texas Government Code §524.0151 and HRC §42.042.

§749.1841. *What are the basic care requirements for a toddler?*

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DIVISION 3. ADDITIONAL REQUIREMENTS
FOR PREGNANT CHILDREN

26 TAC §§749.1861, 749.1863, 749.1865

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1861. *What information must I provide a pregnant child regarding her pregnancy?*

§749.1863. *Is the use of emergency behavior intervention of a pregnant child permitted in a foster home?*

§749.1865. *If my policies permit the admission of adolescent parents with their child(ren), who is responsible for the care of an adolescent's child?*

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

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DIVISION 4. EDUCATIONAL SERVICES

26 TAC §§749.1891, 749.1893, 749.1895

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1891. What responsibilities do I have for the education of a child in care?

§749.1893. What responsibilities do caregivers have for the educational needs of a child in their care?

§749.1895. What are the specific requirements for the educational program of a child diagnosed with autism spectrum disorder?

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

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DIVISION 5. RECREATIONAL SERVICES

26 TAC §§749.1921, 749.1923, 749.1925, 749.1927

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1921. What responsibilities do foster parents have for providing a child with opportunities for recreational activities?

§749.1923. What physical fitness activities must caregivers provide for a child receiving treatment services for primary medical needs or intellectual disability?

§749.1925. What type of daily schedule must caregivers provide for a child receiving treatment services for primary medical needs or intellectual disability?

§749.1927. To what extent must a child receiving treatment services for primary medical needs or intellectual disabilities have normal life experiences?

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

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DIVISION 6. DISCIPLINE AND PUNISHMENT

26 TAC §§749.1951, 749.1953, 749.1955, 749.1957, 749.1959, 749.1961

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1951. What are the requirements for disciplinary measures?

§749.1953. May I use corporal punishment for children in care?

§749.1955. What is "unproductive work"?

§749.1957. What other methods of punishment are prohibited?

§749.1959. To what extent may a caregiver restrict a child's activities as a behavior management tool?

§749.1961. May a person in care discipline or punish another person in care?

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

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SUBCHAPTER L. FOSTER CARE SERVICES:
EMERGENCY BEHAVIOR INTERVENTION
DIVISION 1. DEFINITIONS

26 TAC §749.2001

STATUTORY AUTHORITY

The repealed section is authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed section affects Texas Government Code §524.0151 and HRC §42.042.

§749.2001. What do certain terms mean in this subchapter?

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

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DIVISION 2. TYPES OF EMERGENCY
BEHAVIOR INTERVENTION THAT MAY BE
ADMINISTERED

**26 TAC §§749.2051, 749.2053, 749.2055, 749.2059,
749.2061, 749.2063**

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2051. What types of emergency behavior intervention may I administer?

§749.2053. Who may administer emergency behavior intervention?

§749.2055. What actions must a caregiver take before using a permitted type of emergency behavior intervention?

§749.2059. What is the appropriate use for a short personal restraint?

§749.2061. What precautions must a caregiver take when implementing a short personal restraint?

§749.2063. Are there any purposes for which emergency behavior intervention cannot be used?

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

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DIVISION 3. ORDERS

26 TAC §§749.2101, 749.2103, 749.2105, 749.2107

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2101. Are written orders required to administer emergency behavior intervention, and if so, who can write them?

§749.2103. Must the written order be in a child's record before a caregiver can use an emergency behavior intervention on a child?

§749.2105. What information must a written order include?

§749.2107. Under what conditions are PRN orders permitted for a specific child?

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

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DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

26 TAC §749.2151, §749.2153

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2151. What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?

§749.2153. When must a caregiver release a child from an emergency behavior intervention?

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

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DIVISION 5. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A PERSONAL RESTRAINT

26 TAC §§749.2201, 749.2203, 749.2205

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2201. Who must monitor a personal restraint?

§749.2203. What is the appropriate action for a caregiver to take to ensure the child's adequate respiration, circulation, and overall well-being?

§749.2205. What personal restraint techniques are prohibited?

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

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DIVISION 6. COMBINATIONS OF EMERGENCY BEHAVIOR INTERVENTION

26 TAC §749.2231, §749.2233

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2231. May a caregiver successively use emergency behavior interventions on a child?

§749.2233. May a caregiver simultaneously use emergency medication in combination with personal restraint?

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

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DIVISION 7. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

26 TAC §749.2281, §749.2283

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision

of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2281. *What is the maximum length of time that an emergency behavior intervention can be administered to a child?*

§749.2283. *Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?*

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

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DIVISION 8. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

26 TAC §§749.2301, 749.2303, 749.2305, 749.2307

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2301. *What follow-up actions must caregivers take after the child's behavior no longer constitutes an emergency situation?*

§749.2303. *What must the caregiver document after discussing with the child the use of the emergency behavior intervention?*

§749.2305. *When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?*

§749.2307. *What notice must I provide to the parent when I use an emergency behavior intervention with a child in care?*

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

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DIVISION 9. TRIGGERED REVIEWS

26 TAC §§749.2331, 749.2333, 749.2335, 749.2337, 749.2339

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2331. *What circumstances trigger a review of the use of emergency behavior intervention for a specific child?*

§749.2333. *When must a triggered review occur?*

§749.2335. *Who must participate in the triggered review?*

§749.2337. *What must the triggered review include and what must be documented in the child's record?*

§749.2339. *What if there are four triggered reviews within a 90-day period?*

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DIVISION 10. OVERALL OPERATION EVALUATION

26 TAC §749.2381, §749.2383

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and

Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2381. *What is an overall agency evaluation?*

§749.2383. *What data must be collected?*

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

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS DIVISION 1. GENERAL REQUIREMENTS

26 TAC §§749.2401, 749.2403, 749.2405, 749.2407

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2401. *In what circumstances may I verify an individual spouse as a foster parent?*

§749.2403. *What minimum age requirement must foster parents and caregivers meet?*

§749.2405. *Will my home have to be re-verified if I am a single foster parent and I get married after my home is verified?*

§749.2407. *May a home be verified or approved by more than one child-placing agency simultaneously?*

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

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DIVISION 2. FOSTER HOME SCREENINGS

26 TAC §§749.2445, 749.2447, 749.2449, 749.2451, 749.2453

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2445. *What is a foster home screening?*

§749.2447. *What information must I obtain for the foster home screening?*

§749.2449. *Whom must I interview when conducting a foster home screening?*

§749.2451. *What must I document regarding interviews I conduct for a foster home screening?*

§749.2453. *When must I update the foster home screening?*

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

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DIVISION 3. VERIFICATION OF FOSTER HOME

26 TAC §§749.2470, 749.2473, 749.2475, 749.2477, 749.2479, 749.2481, 749.2483, 749.2485, 749.2487 - 749.2489, 749.2491, 749.2493, 749.2495, 749.2497

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision

of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

- §749.2470. *What must I do to verify a foster family home?*
- §749.2473. *What must I do to verify a foster home that another child-placing agency has previously verified?*
- §749.2475. *To whom must I release information regarding a family on which I previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report?*
- §749.2477. *May I verify a foster home prior to approval by child placement management staff?*
- §749.2479. *May I place children in a foster home before verifying the home?*
- §749.2481. *What type of certificate must a foster home have in order to prove verification?*
- §749.2483. *Do foster parent applicants have to own the home they live in for it to be their primary residence?*
- §749.2485. *What are the requirements for verifying a foster home at a residence that I own?*
- §749.2487. *What are the requirements for an agreement that I have with a foster home that I verify?*
- §749.2488. *What statement must I provide to foster parents regarding foster parent and child-placing agency rights and responsibilities?*
- §749.2489. *What information must I submit to Licensing about a foster home's verification status?*
- §749.2491. *May I verify a foster home to provide different services?*
- §749.2493. *May a foster home provide day care in addition to foster care?*
- §749.2495. *Do foster home verifications expire?*
- §749.2497. *What requirements are there for a transfer or closing summary?*

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DIVISION 4. TEMPORARY, TIME-LIMITED, AND PROVISIONAL VERIFICATIONS

26 TAC §§749.2520, 749.2521, 749.2523, 749.2525 - 749.2527, 749.2529, 749.2531, 749.2533, 749.2535, 749.2537, 749.2539

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision

of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

- §749.2520. *What is the purpose of a temporary verification?*
 - §749.2521. *What must I do prior to issuing a temporary verification?*
 - §749.2523. *For what length of time can I issue a temporary verification?*
 - §749.2525. *Can foster children remain in the foster home while a temporary verification is in effect?*
 - §749.2526. *What is the purpose of a time-limited verification?*
 - §749.2527. *What must I do to issue a time-limited verification?*
 - §749.2529. *For what length of time may I issue a time-limited verification?*
 - §749.2531. *Can I extend a time-limited verification or change the verification from time-limited to non-expiring?*
 - §749.2533. *What is the purpose of a provisional verification?*
 - §749.2535. *What must I do prior to issuing a provisional verification?*
 - §749.2537. *For what length of time can I issue a provisional verification?*
 - §749.2539. *Can foster children remain in the foster home while a provisional verification is in effect?*
- The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 5. CAPACITY AND CHILD/CARE-GIVER RATIO

26 TAC §§749.2550, 749.2551, 749.2555, 749.2557

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

- §749.2550. *What does "children with primary medical needs requiring total care" mean when used in this Division?*

§749.2551. *What is the maximum number of children a foster family home may care for?*

§749.2555. *How do I determine capacity?*

§749.2557. *May a foster home exceed its verified capacity?*

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DIVISION 6. SUPERVISION

26 TAC §§749.2591, 749.2593, 749.2595, 749.2597, 749.2599

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2591. *How am I responsible for ensuring adequate supervision of children in care?*

§749.2593. *What responsibilities does a caregiver have when supervising a child?*

§749.2595. *May I use a video camera to supervise a child in the child's bedroom?*

§749.2597. *Where must the caregivers reside in order to supervise children who are in a transitional living program?*

§749.2599. *Can a child serve as a babysitter?*

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DIVISION 7. NORMALCY

26 TAC §§749.2601, 749.2603, 749.2605, 749.2607

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2601. *What is "normalcy"?*

§749.2603. *Are children in care required to participate in childhood activities?*

§749.2605. *What is the "reasonable and prudent parent standard"?*

§749.2607. *Who makes the decision regarding a foster child's participation in childhood activities?*

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DIVISION 8. RESPITE CHILD-CARE SERVICES

26 TAC §§749.2621, 749.2623, 749.2625, 749.2627, 749.2629, 749.2631, 749.2633, 749.2635

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2621. *What are respite child-care services?*

§749.2623. *What must occur before I place a child for respite child-care services?*

§749.2625. *What information regarding the child must I share with the babysitter, overnight care provider, and respite care provider?*

§749.2627. *What must occur before one of my foster homes accepts a child for respite child-care service?*

§749.2629. *In addition to the requirements of this division, what requirements of this chapter apply to respite child-care services that a foster home provides?*

§749.2631. *How long may a child be in respite child-care services?*

§749.2633. *How frequently may a foster home provide respite child-care services?*

§749.2635. *May I place a child for babysitting, overnight care, or respite care services in a home that Licensing does not regulate?*

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

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DIVISION 9. AGENCY--FOSTER FAMILY RELATIONSHIPS

26 TAC §§749.2651, 749.2653, 749.2655

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2651. *May a foster home accept adults into the home for care?*

§749.2653. *What are the requirements for an unrelated adult to reside in a foster home?*

§749.2655. *When must a foster home notify you of changes that affect the foster home?*

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SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

26 TAC §§749.2801, 749.2803, 749.2805, 749.2807, 749.2809, 749.2811, 749.2813 - 749.2815, 749.2817, 749.2819, 749.2821, 749.2823, 749.2825

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2801. *When must I evaluate a foster home for compliance with Licensing rules?*

§749.2803. *What changes affect a foster home's verification?*

§749.2805. *What is a "major life change in the foster family"?*

§749.2807. *How do I evaluate a foster home's compliance with the relevant Licensing rules affecting the need for the evaluation?*

§749.2809. *What must a plan for achieving compliance include?*

§749.2811. *How do I follow-up to ensure compliance?*

§749.2813. *How do I evaluate Licensing rules for each home every two years?*

§749.2814. *How do I evaluate a foster home prior to extending its time-limited verification or changing its verification from time-limited to non-expiring?*

§749.2815. *How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?*

§749.2817. *Must I monitor and have supervisory visits with a foster home where no children are placed?*

§749.2819. *When may I place a foster home on inactive status?*

§749.2821. *How do the foster parents meet their training requirements while their home is on inactive status?*

§749.2823. *Are background checks required on homes that are on inactive status?*

§749.2825. *How do I take a foster home off inactive status?*

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SUBCHAPTER O. FOSTER HOMES:
HEALTH AND SAFETY REQUIREMENTS,
ENVIRONMENT, SPACE AND EQUIPMENT
DIVISION 1. HEALTH AND SAFETY

26 TAC §§749.2901 - 749.2905, 749.2907 - 749.2909,
749.2911, 749.2913, 749.2915, 749.2917

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2901. *What health and safety regulations must each foster home meet in addition to Licensing rules?*

§749.2902. *What health and safety measures are required at a foster home?*

§749.2903. *What fire safety measures are required at a foster family home not serving children receiving treatment services for primary medical needs?*

§749.2904. *What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs?*

§749.2905. *How often must fire and health inspections be conducted at a foster home?*

§749.2907. *What disaster and emergency plans must each foster home have?*

§749.2908. *How must a foster home practice disaster and emergency plans?*

§749.2909. *How many smoke detectors must a foster home have?*

§749.2911. *How must smoke detectors be installed and maintained at a foster home?*

§749.2913. *How many fire extinguishers must a foster home have?*

§749.2915. *Where must a foster home store dangerous tools and equipment?*

§749.2917. *What are the requirements for animals that are present at a foster home?*

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DIVISION 2. TOBACCO AND E-CIGARETTE
USE

26 TAC §749.2931

STATUTORY AUTHORITY

The repealed section is authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed section affects Texas Government Code §524.0151 and HRC §42.042.

§749.2931. *What policies must I enforce regarding tobacco products and e-cigarettes?*

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DIVISION 3. WEAPONS, FIREARMS,
EXPLOSIVE MATERIALS, AND PROJECTILES

26 TAC §§749.2961, 749.2963, 749.2965, 749.2967

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.2961. *Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?*

§749.2963. *What factors must I consider when determining whether weapons, firearms, explosive materials, or projectiles are stored adequately?*

§749.2965. *How must I determine whether weapons, firearms, explosive materials, or projectiles are present in a foster home?*

§749.2967. *May a caregiver transport a child in a vehicle where firearms, other weapons, explosive materials, or projectiles are present?*

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DIVISION 4. SPACE AND EQUIPMENT

26 TAC §§749.3021, 749.3023, 749.3025, 749.3027, 749.3029, 749.3031, 749.3033, 749.3035, 749.3037, 749.3039, 749.3041, 749.3043

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.3021. *How much space must bedrooms used by foster children have?*

§749.3023. *Which rooms in the home may not be used as bedrooms?*

§749.3025. *May an adult in care share a bedroom with a child in care?*

§749.3027. *May a child in care share a bedroom with an adult caregiver in the foster home?*

§749.3029. *May children of opposite genders share a bedroom?*

§749.3031. *What are the requirements for beds and bedding?*

§749.3033. *What type of personal storage space must a foster child have?*

§749.3035. *What bathroom accommodations must a home have?*

§749.3037. *What are the requirements for indoor space that children can use?*

§749.3039. *What are the requirements for outdoor recreation equipment?*

§749.3041. *What are the requirements for a foster home's physical environment?*

§749.3043. *When is a product considered unsafe and what are a caregiver's responsibilities regarding unsafe products in a foster home?*

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DIVISION 5. NUTRITION AND FOOD PREPARATION

26 TAC §§749.3061, 749.3063, 749.3065, 749.3067, 749.3069, 749.3071, 749.3073, 749.3075, 749.3077, 749.3079, 749.3081

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.3061. *What are the requirements for feeding children in care?*

§749.3063. *What types of food and water must caregivers provide children?*

§749.3065. *What must the caregiver do if a child refuses to or cannot eat a meal or snack that is offered?*

§749.3067. *May a caregiver use food as a reward or punishment or as part of any behavior management program?*

§749.3069. *May caregivers offer a child in care different food choices than what the family is eating?*

§749.3071. *What must I do if a child requires a therapeutic or special diet?*

§749.3073. *What are the nutrition requirements for a child with primary medical needs?*

§749.3075. *What are the feeding requirements for children receiving treatment services for primary medical needs or intellectual disabilities?*

§749.3077. *What are the requirements for tube-feeding formula?*

§749.3079. *What are the requirements for storing food?*

§749.3081. *How must kitchen, dining areas, supplies, and equipment be maintained?*

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DIVISION 6. TRANSPORTATION

26 TAC §§749.3101, 749.3103, 749.3105, 749.3107, 749.3109, 749.3111

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.3101. *What are the requirements for the vehicles used to transport foster children?*

§749.3103. *What are the requirements for transporting foster children?*

§749.3105. *May children transport other foster children?*

§749.3107. *May caregivers teach or supervise foster children in learning to drive?*

§749.3109. *What are the special requirements for transporting a child who requires increased supervision or is non-ambulatory or non-mobile?*

§749.3111. *Do the seat belt requirements prohibit transporting children in the bed of a pick-up truck or other parts of the vehicle on the foster parents' property or public roads?*

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DIVISION 7. SWIMMING POOLS, BODIES OF WATER, SAFETY

26 TAC §§749.3131, 749.3133, 749.3135, 749.3137, 749.3139, 749.3141, 749.3143, 749.3145, 749.3147, 749.3149, 749.3151

STATUTORY AUTHORITY

The repealed sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to

carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.3131. *Who is responsible for complying with the requirements in this subchapter?*

§749.3133. *What are the requirements for a swimming pool at a foster home?*

§749.3135. *What general requirements must caregivers meet for children regarding a body of water?*

§749.3137. *What are the child/adult ratios for swimming activities?*

§749.3139. *May I include volunteers or relatives who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?*

§749.3141. *When must a child wear a life jacket?*

§749.3143. *Must persons who are counted in the swimming child/adult ratio know how to swim and carry out a water rescue?*

§749.3145. *What are the safety requirements for wading pools?*

§749.3147. *What are the requirements for a hot tub?*

§749.3149. *What must I document regarding a body of water that is on or adjacent and accessible to the premises of a foster home?*

§749.3151. *Can foster parents approve a child to participate in swimming activities as an unsupervised childhood activity without complying with the rules of this division?*

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SUBCHAPTER F. TRAINING REQUIREMENTS

DIVISION 1. CAREGIVER TRAINING REQUIREMENTS

26 TAC §§749.801, 749.803, 749.805, 749.807

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.801. Caregiver Pre-Verification Training Requirements.

Prior to foster home verification, the CPA must ensure each caregiver completes pre-verification training that includes:

- (1) an overview of the relevant and applicable laws and rules of this chapter;
- (2) the CPA's philosophy, organizational structure, policies, services, and programs the CPA provides;
- (3) a review of the reasonable and prudent parent standard, and how the standard ensures child safety;
- (4) a review of the CPA and foster parent verification agreements; and
- (5) a review of the Child Care Regulation Statement of Foster Parent and Child-Placing Agency Rights and Responsibilities form, or a form created by the CPA with the same information.

§749.803. General Caregiver Training Requirements.

(a) Before a child-placing agency (CPA) places a child in the care of the foster home (home), at least one foster parent must complete:

- (1) four hours of general caregiver training;
- (2) six hours emergency behavior intervention training (EBI); and
- (3) safe sleeping training, if the foster home will care for a child in care younger than two years old.

(b) Other caregivers, including the second foster parent, must complete the training required under subsection (a) of this section within 90 days after the CPA places the child in the care of the foster home.

(c) All caregivers who provide psychotropic medication must finish training for administering psychotropic medication before administering a psychotropic medication.

(d) General caregiver training must include:

- (1) topics appropriate to the needs of each child for whom the caregiver will be providing care;
- (2) trauma informed care;
- (3) measures to prevent, recognize, and report suspected occurrences of child abuse, including sexual abuse;
- (4) procedures to follow in emergencies, such as weather-related emergencies, volatile persons, and severe injury or illness of a child or adult; and
- (5) preventing the spread of communicable diseases.

(e) EBI training, safe sleeping training, and psychotropic medication training must include curriculum determined by the CPA.

(f) The CPA may decide not to require a foster parent to take EBI training if the CPA determines the training does not directly apply to the:

- (1) ages of each child in care, and
- (2) types of services the home will provide.

§749.805. Pediatric First Aid and Pediatric Cardiopulmonary Resuscitation (CPR) Requirements.

(a) One foster parent must be certified in pediatric first aid and pediatric CPR before a child-placing agency (CPA) issues the foster

home verification. Other caregivers, including a second foster parent, must be certified in pediatric first aid and CPR within 90 days after the CPA verifies the home.

(b) Pediatric first aid must include training related to rescue breathing and choking.

(c) Pediatric CPR training must adhere to the guidelines for CPR established by the American Heart Association.

§749.807. Additional Caregiver Training Requirements.

(a) From the date a child-placing agency (CPA) verifies a foster home (home), the CPA must annually evaluate the home to identify any areas of non-compliance with minimum standards. The CPA will evaluate the following:

- (1) immediate needs of the household;
- (2) compliance history of the home; and
- (3) investigation history of the home.

(b) If the CPA identifies areas of non-compliance in the home, the CPA must provide all caregivers in that home with additional training appropriate to address the areas of non-compliance.

(c) For each home that provides care to a child receiving treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder, the CPA must provide at least one hour of annual training to each caregiver relating to the treatment services the child in care receives, regardless of whether the CPA identifies concerns in the home.

(d) Except for the training required in subsection (c) of this section, the CPA may decide not to require the additional training for all caregivers if no concerns are found during the annual check.

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DIVISION 2. EMPLOYEE TRAINING REQUIREMENTS

26 TAC §§749.821, 749.823, 749.825

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.821. Employee Orientation Requirements.

Before beginning work in a child-placing agency each employee must go through an orientation that includes:

- (1) an overview of the relevant and applicable laws and rules of this chapter;
- (2) information about how the CPA is organized, its rules, and the services and programs it offers; and
- (3) the needs and characteristics of each child in care that the CPA is licensed to serve.

§749.823. New Employee Training Requirements.

(a) Within 30 days after starting the job, child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers must complete:

(1) at least two hours of training that addresses normalcy, trauma informed care, and preventing the spread of communicable diseases; and

(2) emergency behavior intervention (EBI) training, consistent with the child-placing agency's EBI curriculum.

(b) An employee who only handles adoption services responsibilities does not have to complete any new employee training.

(c) An employee who only handles responsibilities for a child in care receiving treatment services for primary medical needs does not have to complete EBI training.

(d) Before acting as a caregiver, an employee must have pediatric first aid and pediatric cardiopulmonary resuscitation training.

§749.825. Employee Annual Training Requirements.

(a) Each child placement staff, child placement management staff, executive director, treatment director, and child-placing agency (CPA) administrator must complete at least 15 hours of annual training.

(b) At least one hour of the training must be about preventing, recognizing, and reporting child abuse, neglect, and exploitation, specifically:

(1) the factors indicating a child is at risk for abuse, neglect, or exploitation;

(2) the warning signs indicating a child may be a victim of abuse, neglect, or exploitation;

(3) the procedures for reporting child abuse, neglect, or exploitation; and

(4) a list of community organizations that have training programs on preventing, recognizing, and reporting child abuse, neglect, and exploitation that are available to CPA staff members, each child in care, and parents.

(c) A CPA must have a clear way to track annual training, based on either the hire date, calendar year, or fiscal year, and use this method consistently.

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DIVISION 3. EMPLOYEE AND CAREGIVER TRAINING DOCUMENTATION REQUIREMENTS

26 TAC §749.831

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new section affects Texas Government Code §524.0151 and HRC §42.042.

§749.831. Employee and Caregiver Documentation of Required Trainings.

(a) A child-placing agency (CPA) must check that all training teaches job-related skills. The CPA must document how the CPA determined the training met this requirement.

(b) A test must be given at the end of every training that shows the caregiver's or employee's understanding of how to apply the skills in the foster home or work environment. The test must be signed and dated by the caregiver or employee.

(c) The CPA must document and maintain proof in the caregiver's or employee's record that the caregiver or employee completed the following training:

(1) for all caregivers:

(A) pre-verification training;

(B) caregiver training;

(C) pediatric first aid and pediatric cardiopulmonary resuscitation (CPR) training; and

(D) additional training topics covered, including:

(i) the results of the annual evaluation for concerns about health, safety, and well-being of each child in care; and

(ii) if the CPA determines that a foster home requires additional training to address areas of non-compliance identified during the CPA's annual evaluation of the foster home, an explanation of how the CPA chose the training topics for each caregiver's additional training; or

(iii) when the CPA does not find any areas of non-compliance, the reasoning the CPA used for each caregiver for not requiring annual training for each caregiver; and

(2) for all employees:

(A) orientation;

- (B) new employee training;
- (C) pediatric first aid and pediatric CPR training, if applicable; and
- (D) annual training, including a statement signed by the employee that the abuse, neglect, and exploitation training requirements were met.

(d) If the CPA determines that a caregiver is not required to complete an annual training not required by statute, the CPA must document the reason the training was not required.

(e) Certificates for pediatric first aid and pediatric cardiopulmonary resuscitation must have an expiration date, and the training documented on the certificate must be renewed before the expiration date.

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SUBCHAPTER G. FOSTER HOME SCREENINGS AND VERIFICATIONS DIVISION 1. FOSTER HOME SCREENINGS

26 TAC §§749.901, 749.903, 749.905

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.901. Foster Home Screenings.

(a) A child-placing agency (CPA) must complete a foster home (home) screening as detailed in this section before verifying a home.

(b) The CPA must update the home screening with an addendum any time there is a major life change in the foster family or a change that affects the home's verification.

(c) Through interviewing each prospective foster parent or completing a joint interview, the CPA must obtain, discuss, assess, and document the following information about a prospective home.

(1) The age of each prospective foster parent and any other member of the household.

(2) The basic competency of each prospective foster parent, including ensuring and documenting that each prospective foster parent:

(A) can meet basic competencies, including basic reading, writing, and math; or

(B) have a support system in place that can immediately assist with these competencies.

(3) The personal characteristics of the prospective foster parents, including an assessment of each parent's:

(A) emotional stability, character, health, and ability to manage adult responsibility;

(B) motivation and willingness to provide foster care, including the parents' expectations for the child in care and willingness to adjust those expectations based on the needs of the child in care; and

(C) ability to provide a caring environment, appropriate supervision, and responsible discipline.

(4) History of current interpersonal relationships, including marriages, common-law marriages, and other relationships between people who share or have shared a domestic life without being married, and family relationships, including:

(A) the current relationship status and quality of the relationship between the prospective foster parents; and

(B) the quality of the relationship between the prospective foster parents and the prospective foster parents' children living in or out of the home, including:

(i) strengths and problems in all relationships; and

(ii) how the strengths and problems may impact a child placed in the care of the home.

(5) The financial status of the prospective foster parents, including:

(A) discussing with the prospective foster parents the current reimbursement process, if applicable, and ensuring the prospective foster parents' understanding of that process; and

(B) the CPA's determination that the prospective foster parents have or have reasonable access to sufficient resources to support the household and all children in care.

(6) The results of criminal history and central registry background checks conducted on the prospective foster parents and on any non-client 14 years old or older who regularly or frequently stays at or is present in the home, including:

(A) confirmation that the required Child Care Regulation (CCR) background checks were conducted and assessed on:

(i) each prospective foster parent; and

(ii) any non-client who is at least 14 years old or older who will be regularly or frequently staying at or is present in the home, excluding children or young adults in care;

(B) documentation the CPA assessed all background check results received from CCR and any background check information self-disclosed by the prospective foster parents and any person connected to the home;

(C) documentation, including the background check Eligibility Determination provided by the Texas Health and Human Services Commission; and

(D) the CPA must not include any background check results received from CCR in the home screening document.

(7) A history of the prospective foster parents' residence, including the length of time spent at each residence for the last two years. The history must include each full street address, and the CPA must:

(A) ask the prospective foster parents if the police have come to any of the homes in the past two years;

(i) if the police have come to any of the prospective foster parents' homes, obtain service call information from the appropriate law enforcement agency for each of the prospective foster parents' addresses over the past two years; and

(ii) regardless of background check results, if the prospective foster parents report any incident requiring the police to come to any of the homes, request background information from each law enforcement agency that responded, and discuss the incident and any additional background information that the CPA obtains with the prospective foster parents; and

(B) report to CCR the information obtained about the prospective foster family's domestic violence history, as applicable. The CPA must report this information regardless of whether the CPA verifies the home. This report must be made to CCR within two days of learning about the history.

(8) Health status of all persons living in the home, including:

(A) information about the current and previous physical and mental health status (including substance abuse history) of all persons living in the home in relation to the family's ability to provide foster care; and

(B) whether any noted health-related issue may affect the prospective foster parents' ability to care for a child placed in the care of the home.

(9) The prospective foster parents' values, feelings, and practices regarding child-care and discipline, including:

(A) each prospective foster parent's experience caring for children;

(B) the ways each prospective foster parent was disciplined as a child and the prospective foster parent's reactions to the discipline;

(C) each prospective foster parent's discipline styles, techniques, and ability to recognize and respect differences in children and use discipline methods suitable to an individual child; and

(D) the CPA's approved disciplinary methods, and if a prospective foster parent's current discipline methods are different from those the CPA approves the CPA must discuss and assess how the foster parent would change child care discipline practices to conform to the CPA's approved methods.

(10) Each prospective foster parent's sensitivity to and feelings about a child in care who may have been subjected to abuse, neglect, or exploitation, including each prospective foster parent's:

(A) understanding of the dynamics of child abuse, neglect, and exploitation;

(B) understanding and methods of dealing with the prospective foster parents' own past experiences of abuse and neglect, if the prospective foster parents have any; and

(C) understanding of how these issues and experiences may affect the prospective foster parents, other family members of the prospective foster parents, and a child in care.

(11) The attitude of other household members about the prospective foster parents' plan to provide foster care, including each household member's:

(A) involvement in the care of a child in care;

(B) attitudes toward a child in care; and

(C) acceptance of the verification and of being a foster family for a child in care.

(12) Support systems available to each prospective foster parent, and support the family may receive from these resources, including information about any person who may provide support as a caregiver during an unexpected event or crisis, such as an illness or disability of a kinship parent, loss of transportation, or death of an immediate family member.

(13) Prospective foster parent's ability to work with specific kinds of behaviors and backgrounds, including each prospective foster parent's:

(A) willingness and ability to:

(i) work with children who have challenging behaviors;

(ii) care for children of a specific sex and age range;

(iii) care for a specific number of children, including children who are part of the same sibling group; and

(iv) provide additional services, such as respite care;

and

(B) understanding of the:

(i) concepts of trauma informed care and how to use those concepts in the care, treatment, and management of a child placed in the home; and

(ii) dynamics of separation and loss and the effects of these experiences on a child.

(14) Obtain and assess background information from all other CPAs that have previously verified the home and document the reason the home was closed. Before approving and verifying the home, the receiving CPA must address the closure or any identified risk indicators, as applicable, with the prospective foster parents before approval and verification of the home if the background information indicates the home:

(A) was closed by the previous CPA;

(B) had potential risk indicators that the previous CPA did not adequately address; or

(C) was recommended for closure by a Texas Health and Human Services Commission Agency Home Closure Recommendation.

§749.903. Required Interviews and Reference Checks.

(a) Interviews and reference checks for a foster home (home) screening must include:

(1) one individual interview with each prospective foster parent and each household member at least three years old or older living in the home either full or part time;

(2) one joint interview with the prospective foster parents;

(3) one in-home family group interview with all household members present;

(4) one individual interview with each adult child of the prospective foster parents not living in the home; and

(5) three additional references, including at least one from a non-relative.

(b) For subsection (a)(4) of this section, if the child-placing agency (CPA) cannot reach an adult child, the CPA may skip the interview once the CPA has tried to contact the individual at least three separate times.

§749.905. Home Screening Documentation Requirements.

A child-placing agency must maintain the following documentation in the foster home (home) record:

(1) a dated copy of the home screening that includes:

(A) documentation of interviews and reference checks, including all interview attempts and outcomes;

(B) addendums to the home screening, including the date the addendum was completed, and

(C) an evaluation of the current placements in the home, when an addendum is completed for a major life change; and

(2) changing conditions of the verification for an existing home, including review and approval if the home will provide additional services than it was initially verified to offer.

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

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DIVISION 2. FOSTER HOME VERIFICATION

26 TAC §§749.921, 749.923, 749.925, 749.927, 749.929, 749.931, 749.933, 749.935, 749.937

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.921. General Requirements.

(a) Each foster parent must be at least 18 years old.

(b) A child-placing agency (CPA) may verify only one spouse as a foster parent if:

(1) the spouse whom the CPA verifies will be the only one responsible for the day-to-day care of a child in care in the foster home (home); and

(2) the CPA determines that the spouses maintain separate residences.

(c) A home may not be verified to provide foster care services by more than one CPA at a time; however, a home may be verified by one agency to provide foster care services and approved by another CPA for adoption only.

§749.923. Verifying a Foster Home.

(a) A child-placing agency (CPA) must take the following steps to verify a foster home (home).

(1) Complete and document the requirements in this division.

(2) Obtain:

(A) a floor plan, photo, or other documentation of the home that shows the purposes of all rooms in the home and identifies the indoor areas for a child in care use; and

(B) a floor plan or photo of the outside areas that shows the buildings, driveways, fences, storage areas, gardens, recreation areas, and bodies of water.

(3) Evaluate all applicable laws and rules of this chapter by:

(A) completing an inspection of the home to ensure the home meets applicable rules relating to Daily Care, Education, Discipline, and Health and Safety Requirements of this chapter;

(B) making recommendations about the home's overall ability to keep a child in care safe, paying specific attention to areas of substantial safety risk to a child in care and how the CPA addressed areas of identified safety risks with the prospective foster parent before approving and verifying the home; and

(C) documenting in the foster home file the details of the inspection of the foster home, any identified safety risks, and explain how those risks were corrected.

(4) Obtain the review and approval of the home screening, and the recommended verification of the home from the child placement management staff.

(5) Issue a verification certificate that must be posted at the home or be made immediately available for review that includes:

(A) the name and address of the foster family;

(B) the home's total capacity and foster care capacity, including ages and sex of each child in care; and

(C) the types of services the home provides.

(b) A new verification certificate must be issued to a home any time there is a change that affects the verification.

§749.925. Temporary Foster Home Verifications.

(a) A child-placing agency (CPA) may issue a temporary foster home (home) verification when a foster family moves from one residence to another.

(b) The temporary verification is valid for a maximum of six months and cannot be extended.

(c) Within 30 days after the foster home moving to the new residence, the CPA must inspect the new residence for compliance with health and safety requirements in this chapter.

(d) Before issuing the non-expiring home verification, the CPA must ensure the home meets all the requirements in this chapter.

(e) The CPA cannot place a new child in the care of the home until the non-expiring verification is issued.

§749.927. Provisional Verifications.

(a) A child-placing agency (CPA) may issue a provisional verification for a foster home (home) when the home transfers from one CPA to another and continues providing care for the children placed there by the previous CPA.

(b) A provisional verification may be used for up to six months from the date the provisional verification was issued and cannot be extended.

(c) The CPA may issue a provisional verification after:

(1) the receiving CPA requests and receives the background information from the home's previous CPA;

(2) if the home is moving to a new residence, the receiving CPA inspects the new location and determines that the home meets the health and safety laws and rules in this chapter;

(3) based on the review of the background information and current screening, the receiving CPA decides that the home does not pose a potential risk to the health or safety of a child in care; and

(4) the receiving child placement management staff reviews and approves the provisional verification by signing and dating the provisional verification certificate. The provisional verification certificate must include any conditions or restrictions from the previous verification.

§749.929. Previously Verified Foster Homes.

(a) For a foster home (home) previously verified by another child-placing agency (CPA), the receiving CPA must conduct and complete a new home screening as required in this subchapter.

(b) If a home is transferring from another CPA, the receiving CPA must request information about the home by submitting a written request to the agency that transferred the foster home.

(c) If the home is transferring from another CPA with a child in care, the receiving CPA may verify the home before completion of the background check.

§749.931. Releasing Information About a Previously Verified Foster Home.

(a) A child-placing agency (CPA) must release background information about a current or previous foster home (home) to:

(1) another CPA conducting a home screening, pre-adoptive home screening, or post-placement adoptive report; or

(2) an independent contractor who is hired or required by the court to conduct a social study under Texas Family Code, Chapter 107, Subchapter D.

(b) Background information includes:

(1) the home screening and any related documentation or addendums;

(2) documentation of supervisory visits and evaluations for the past year;

(3) records of deficiencies and resolutions for the past year, including information regarding pending investigations and unresolved deficiencies;

(4) the most current fire and health inspections or checklists;

(5) the transfer or closing summary for the home;

(6) copies of any current or previous plans for to achieve compliance or other type of development plan implemented by Child Care Regulation or the CPA for the past two years, if applicable;

(7) copies of any current or previous corrective action or adverse action plans for the past two years, if applicable; and

(8) information of any pending investigations and any unresolved deficiencies.

(c) A CPA must release the background information to the requesting CPA or independent contractor by the 10th day after receiving the written request, including informing the requesting agency of any pending investigations and unresolved deficiencies. By the 10th day after completion of any pending investigations and unresolved deficiencies, the CPA must release to the requesting agency the:

(1) outcome of any investigations and any resulting deficiencies cited; and

(2) resolution of any deficiencies.

§749.933. Foster Home Verification Changes.

(a) A child-placing agency (CPA) must submit information to Child Care Regulation within two business days after:

(1) verifying a new foster home (home);

(2) temporarily or provisionally verifying a home, including when the verification is no longer temporary or provisional;

(3) placing a home on or removing a home from inactive status;

(4) changing conditions of the verification for an existing home; and

(5) closing a home, including the reason the CPA closed the home.

(b) If a CPA changes the conditions of a home's verification to allow the home to provide additional services, the child placement management staff must ensure there is no conflict of care with a child in care currently in the home.

(c) If a home intends to add a new, unrelated household member, the CPA must:

(1) ensure the individual has completed the necessary background checks; and

(2) evaluate the impact the individual will have on the foster family and each child in care before the individual moves into the home.

§749.935. Foster Homes that Provide Day Care.

A foster home (home) may provide day care in addition to foster care under the following conditions:

(1) the home meets all relevant laws and rules related to the care the home is providing;

(2) the child-placing agency completes a written assessment, signed by child placement management staff, of the:

(A) needs of each child in care of the foster home and how the needs of the children receiving day care services may impact each child receiving foster care services; and

(B) basis for determining no conflict of care exists in providing multiple types of care; and

(3) Residential Child Care Regulation and Child Day Care Programs approve.

§749.937. Transferring or Closing a Foster Home.

(a) A child-placing agency (CPA) must complete a transfer summary or closing summary when a foster home (home) transfers to another CPA or closes.

(b) A transfer summary and a closing summary must include:

(1) a copy of the verification certificate;

(2) the home's addresses for the past two years and, as needed, directions for rural addresses;

(3) the length of time the foster parents have been verified by the CPA;

(4) for each child in care who was in care for the last two years, the:

(A) number of children fostered;

(B) type of treatment services provided to each child in care; and

(C) reason for the discharge of each child in care;

(5) a description of any limitations on the verification that were in place for the foster home in caring for and working with a child in care;

(6) a description of any risk indicators to a child in care at the time of the transfer or closing;

(7) any plan to achieve compliance or other type of development plan that was in place within the previous 12 months of the date of transfer or closing;

(8) any Texas Health and Human Services Commission Agency Home Closure Recommendation form, corrective action plan, or adverse action plan that was in place at the time of transfer or closing; and

(9) a statement concerning whether the CPA would recommend the home for verification in the future, including whether the CPA would recommend any limitations or restrictions on the verification, and the basis of the CPA's recommendation.

(c) A transfer summary must also:

(1) include pending investigations or unresolved deficiencies;

(2) be completed by the 10th day after a CPA receives a written request to transfer and the transferring CPA must forward it immediately to the requesting CPA.

(d) A closing summary must also:

(1) include the reason the home is closing, including whether the CPA required the home to close;

(2) include a description of any pending investigations and unresolved deficiencies; and

(3) be completed by the 20th day after a home is closed.

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

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DIVISION 3. CAPACITY AND SUPERVISION

26 TAC §§749.951, 749.953, 749.955, 749.957, 749.959

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.951. Capacity and Child/Caregiver Ratio.

(a) A one-parent or two-parent foster home (home) may care for up to six children, with the following guidelines:

(1) if a home cares for infants, the home may care for up to six children with:

(A) a maximum of two infants; and

(B) no more than four children less than six years old.

(2) If a home cares for a child receiving treatment services for primary medical needs requiring total care and has two caregivers (two foster parents or one foster parent and a live-in caregiver), the home may care for up to:

(A) six children, with up to three children who receive treatment services for primary medical needs requiring total care; or

(B) four children if all children receive treatment services for primary medical needs requiring total care.

(3) If the home cares for a child receiving treatment services for primary medical needs requiring total care and has one foster parent, the home may care for up to:

(A) four children, with a maximum of one child who receives treatment services for primary medical needs requiring total care; or

(B) two children, if all children receive treatment services for primary medical needs requiring total care.

(b) The exceptions in subsection (a) of this section do not apply to:

(1) placements that are necessary to maintain a sibling group; or

(2) homes verified to provide treatment services to a child with primary medical needs before January 1, 2015.

(c) The capacity of a foster home includes children in care, as well as adopted and biological children living in the home, children receiving respite services, and children for whom the home provides daycare. Young adults in care also count towards the capacity.

(d) The child-placing agency must check and document in the home record the reason the home can take care of the number of children allowed in the home, including how the CPA considered the following:

(1) number of caregivers;

(2) services being provided and the needs of the children in the home;

(3) developmental age and any medical needs of the children in the home and in placement; and

(4) physical space and bathroom accommodations in the home.

§749.953. Expanding Capacity of a Foster Home.

A foster home may care for seven or eight children as recommended by a child-placing agency (CPA) and approved by Child Care Regulation (CCR). To approve expanding the foster home's capacity, the CPA must:

(1) complete the CCR Foster Family Home Capacity Exception Form; and

(2) request and obtain a variance from CCR.

§749.955. Supervision.

(a) The child placement management staff must ensure that supervision of a child in care adequately accounts for:

(1) the specific needs of the child in care, including any history of high-risk behaviors that would require additional supervision; and

(2) the environment where the supervision is taking place.

(b) A caregiver is responsible for:

(1) knowing which children in care the caregiver is responsible for;

(2) providing the level of supervision necessary to ensure the health, safety and well-being of each child in care, including auditory and/or visual awareness of the ongoing activity of each child in care as appropriate;

(3) being able to intervene when necessary to ensure the safety of each child in care; and

(4) being aware of any special supervision needs based on the developmental age, maturity, and service plan restrictions of the child in care.

(c) When a child in care participates in an unsupervised childhood activity, the caregiver must know:

(1) where the child in care is scheduled to be and who the child in care will be with; and

(2) how and when the child in care will be returning home.

§749.957. Supervision with Video Cameras.

(a) Video cameras may only be used to supervise, or watch live, a child in care, who is an infant or toddler, unless:

(1) the parents or individual legally allowed to provide permission for the child in care agree to using video cameras; and

(2) the service plan for the child in care notes that using video cameras to help manage risky behaviors or other situations that need extra supervision is acceptable.

(b) If video cameras are allowed:

(1) the video cameras must be placed so that the child in care can have privacy when changing clothes and using the bathroom;

(2) the video cameras may not be used to record the child in care; and

(3) only the foster home's caregivers may have access to view or monitor the video of the child in care.

§749.959. Transitional Living Program Supervision.

Caregivers counted in the child to caregiver ratio and responsible for supervising a child in care in a transitional living program (program) must be:

(1) physically available to each child in care at all times;

(2) capable of responding quickly in an emergency; and

(3) capable of monitoring the ongoing activities of each child in the program.

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DIVISION 4. BABYSITTING, OVERNIGHT CARE, AND RESPITE CARE

26 TAC §§749.973, 749.975, 749.977

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.973. Children in Care as Babysitters.

(a) A child, including a child in care, may serve as a babysitter for another child in the foster home if the child placement management

staff approves the child to babysit and establishes limits with duration and frequency.

(b) A child-placing agency must consider:

(1) the developmental age of the child who will provide the babysitting; and

(2) any known history of high-risk behaviors of the child providing the babysitting and the child who will be babysat.

§749.975. Respite Child-Care Services.

(a) Before putting a child in care in respite care, a child-placing agency (CPA) must inform the parent of the child in care and explain the plan for respite care to the child in care, including how long the respite care will last.

(b) The child placement management staff must approve any respite child-care and ensure that the placement will not cause a conflict of care for any child who is already placed in the foster home (home).

(c) A child in care can stay in respite care for as long as needed, as decided by the CPA.

(d) After a child in care has been in respite care for 60 days, the CPA must check if the respite care is still the best option and make a plan with a timeframe for when the child in care will go back to the home or move to a new placement.

§749.977. Information Sharing with Babysitter, Overnight Care Provider, or Respite Care Providers.

Before a babysitter, overnight care provider, or respite care provider may provide care to a child in care, a child-placing agency (CPA) must share the following information with the babysitter or provider:

(1) specific needs of the child in care, including:

(A) all psychological, psychiatric, and medical treatments currently provided, including medication and medication instructions, if applicable;

(B) any information needed for the daily care, including supervision, discipline, safety plans, and high-risk behaviors of the child in care; and

(C) authorization for medical treatment; and

(2) emergency contact information for the physician, foster parents, and the CPA of the child in care.

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SUBCHAPTER H. HEALTH AND SAFETY
REQUIREMENTS
DIVISION 1. PHYSICAL ENVIRONMENT
SAFETY

**26 TAC §§749.1001, 749.1003, 749.1005, 749.1007,
749.1009, 749.1011, 749.1013, 749.1015, 749.1017, 749.1019**

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1001. Physical Environment of a Foster Home.

(a) The foster home (home) and all structures and equipment on the property's grounds must be kept in a clean, safe, and sanitary condition and be in a reasonable state of repair.

(b) A home must ensure that indoor and outdoor space and equipment do not pose an undue safety risk to children in care.

(c) Caregivers must provide adequate supervision to prevent access to space or equipment that poses a safety risk to a child in care as needed based on the age, maturity, and service plan restrictions of a child in care.

§749.1003. Health Inspections.

(a) A foster home (home) must have either:

(1) a health inspection conducted by the local health authority; or

(2) a health and safety evaluation conducted by the child-placing agency's child placement staff using the Environmental Health Checklist for Foster Homes form.

(b) A home must correct any deficiencies documented during any inspection or evaluation and comply with any conditions or restrictions specified by the inspector or evaluator.

§749.1005. Fire Inspections.

(a) A foster home (home) must have either:

(1) a fire inspection conducted by a state or local fire authority; or

(2) a fire safety evaluation developed and conducted by the child-placing agency's child placement staff.

(b) A home must correct any deficiencies documented during any inspection or evaluation and comply with any conditions or restrictions specified by the inspector or evaluator.

§749.1007. Fire Safety.

(a) A foster home (home) must have a working smoke detector in the following areas:

(1) the kitchen;

(2) hallways or open areas outside of sleeping rooms; and

(3) on each level of a home with multiple levels.

(b) The home must have one non-expired, operational fire extinguisher that is easily accessible in case of emergency.

(c) The home must ensure that exits to the home are not blocked.

§749.1009. Emergency Plans.

A foster home must have a written plan for handling potential disasters and emergencies, including fire and severe weather. This plan can be made using a template provided by the child-placing agency (CPA). The CPA that verified the home must annually review and evaluate the plan with all caregivers and children in care. The review of the plan must be provided in the communication method of the child in care.

§749.1011. Animals.

(a) Any animal on the premises of a foster home must not pose an undue health or safety threat to children in care.

(b) Caregivers must provide adequate supervision and intervene as necessary to protect a child in care from any animal-related safety risk based on the animals involved and the age, maturity, and service plan restrictions of a child in care.

(c) Pets must be vaccinated as required by state law.

§749.1013. Tobacco and E-Cigarette Use.

Household members and visitors are not allowed to smoke tobacco products, cigarettes, e-cigarettes, or vaporizers in front of a child in care or inside the foster home or motor vehicle.

§749.1015. Nutrition and Food Safety.

(a) Caregivers must provide a child in care with food and water that meet the individual needs for growth and diet of the child in care, similar to what other children in the foster home (home) receive.

(b) Caregivers must provide a child in care with drinking water and food that is served in a safe and sanitary manner.

(c) A home must ensure all food items are stored in a manner that protects them from contamination, spoiling, and insects and rodents.

§749.1017. Transportation.

(a) Caregivers must utilize safe and reliable transportation for a child in care.

(b) Special provisions must be made for transporting non-ambulatory and non-mobile children in care. When necessary, this includes locks for wheelchairs and hydraulic lifts.

(c) A caregiver must secure each child in care in an infant safety seat, rear-facing convertible child safety seat, forward-facing child safety seat, child booster seat, safety vest, harness, or a safety belt, as appropriate to the age, height, and weight of the child in care and according to the manufacturer's instructions.

§749.1019. Documentation of Health and Safety Requirements.

A child-placing agency must document the following in the foster home's (home's) record:

(1) the results of each health inspection or health and safety evaluation;

(2) the results of each fire inspection or fire safety evaluation; and

(3) a copy of the home's emergency plan, including any subsequent reviews.

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

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**DIVISION 2. WEAPONS, FIREARMS,
EXPLOSIVE MATERIALS, AND PROJECTILES**

26 TAC §§749.1031, 749.1033, 749.1035, 749.1037

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1031. Weapons, Firearms, Explosive Materials, and Projectiles in a Foster Home.

(a) Each child-placing agency (CPA) must have and enforce a policy that addresses the presence of weapons, firearms, explosive materials, and projectiles in a foster home. The policy must contain specific requirements to ensure that a child in care does not have unsupervised access to these items, including requiring a foster parent to keep such items in locked storage when they are not in use.

(b) The CPA must determine whether it is appropriate for a specific child in care to use weapons, firearms, explosive materials, or projectiles.

(c) No child in care may use a weapon, firearm, explosive material, or projectile, unless the child in care is directly supervised by an adult knowledgeable about the use of the weapon, firearm, explosive material, or projectile that is to be used by the child in care.

(d) The CPA must determine whether it is appropriate for a specific child in care to use a toy that explodes or shoots.

(e) No child in care may use or be around a toy that explodes or shoots unless:

(1) the CPA determines it is appropriate for the child in care;

(2) the child in care is directly supervised by an adult; and

(3) the toy is age-appropriate for the child in care.

§749.1033. Storage of Weapons, Firearms, Explosive Materials, or Projectiles in a Foster Home.

(a) When determining if weapons, firearms, explosive materials, and projectiles are stored so that a child in care does not have unsupervised access to such items, the child-placing agency (CPA) must consider the age, history, emotional maturity, and background of each child in the care of the foster home (home).

(b) A CPA may not require a home to disclose the specific types of firearms that are stored or otherwise present in the home.

(c) Firearms that are inoperable and solely ornamental are exempt from the storage requirements in this rule.

§749.1035. Determining if Weapons, Firearms, Explosive Materials, or Projectiles are Present in a Foster Home.

(a) When a child-placing agency (CPA) completes a foster home (home) screening, the CPA must ask whether weapons, firearms, explosive materials, or projectiles are present in the home. If these items are present, the CPA must review the CPA's weapons, firearms, explosive materials, and projectiles policy and requirements with the prospective foster parents.

(b) The home record must include documentation on:

(1) whether weapons, firearms, explosive materials, or projectiles are present in the home; and

(2) specific precautions the caregivers will take to ensure children in care do not have unsupervised access.

(c) The annual evaluation of the home's compliance with this chapter must include a discussion of whether the home has weapons, firearms, explosive materials, or projectiles, and if so, how these items are stored.

(d) In complying with this rule, a CPA may not require the home to disclose the specific types of firearms that are stored or otherwise present in the foster home.

(e) In complying with this rule, a CPA may not require the home to notify the CPA if there is any change in the types of firearms that are present in the home.

§749.1037. Transporting a Child in Care in a Vehicle Where Weapons, Firearms, Explosive Materials, or Projectiles are Present.

(a) A caregiver may transport a child in care in a vehicle where firearms (other than handguns), other weapons, explosive materials, or projectiles, are present if:

(1) all firearms are not loaded;

(2) the firearms, other weapons, explosive materials, or projectiles are inaccessible to the child in care; and

(3) possession of the firearm is legal.

(b) A caregiver may transport a child in care in a vehicle where a handgun is present if:

(1) the handgun is in the possession and control of the caregiver; and

(2) the caregiver is not prohibited by law from carrying a handgun.

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DIVISION 3. SLEEPING SPACE AND BATHROOM REQUIREMENTS

26 TAC §749.1051, §749.1053

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1051. Indoor Space: Sleeping Spaces and Sleeping Surfaces.

(a) Each child in care must have a designated sleeping space with an individual sleeping surface, such as a bed or mattress, and linens. Up to four children may share a sleeping space with approval from the child placement management staff (CPMS).

(b) Sleeping spaces and surfaces must fit the needs, developmental level, and age of the child in care.

(c) Before approving a child in care to share a sleeping space or sleeping surface, the CPMS must determine and document in the service plan of the child in care there is no known risk of harm to the child in care by sharing a sleeping space or sleeping surface with the other individual after assessing:

(1) the relationship between the child in care and the individual;

(2) the ages and developmental levels of the child in care and the individual, noting that after the 18th birthday of the child in care, the child in care may share a bedroom with another youth who is 16 years old or older, provided the age difference does not exceed two years;

(3) the behaviors of the child in care and the individual;

(4) any history of possible sexual trauma or sexually inappropriate behaviors of the child in care or the individual; and

(5) any other identifiable factors that may affect the appropriateness of the individual and the child in care sharing a sleeping space.

(d) CPMS may not approve an infant to share a sleeping surface.

§749.1053. Indoor Space: Bathrooms.

A foster home must have at least:

(1) one bathroom that allows for privacy;

(2) one toilet; and

(3) one bathroom sink and one tub or shower that have hot and cold running water.

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DIVISION 4. POOLS AND WATER ACTIVITIES

26 TAC §§749.1061, 749.1063, 749.1065

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1061. Water Safety: Pools, Hot Tubs, and Bodies of Water.

(a) Swimming pools must have a barrier on all sides, at least four feet high. An exterior wall of the home may serve as one side of the barrier.

(b) Gates or other means of access to a pool or hot tub must be secured with a safety device, such as a bolt lock, which is locked when the pool or hot tub is not in use.

(c) Swimming pools and hot tubs must have a throwable flotation device.

(d) Any door that leads from the home to an area with a swimming pool, hot tub, or body of water must have:

(1) a door alarm; or

(2) a lock that is only accessible and operational by an adult unless:

(A) the state or local fire authority determines that the lock violates the fire code; and

(B) the child-placing agency keeps the fire authority's determination in the foster home record.

(e) The bottom of a swimming pool or hot tub must always be visible.

(f) Swimming pool and hot tub chemicals and machinery rooms must be inaccessible to children in care.

§749.1063. Swimming Supervision.

(a) Caregivers must inform each child in care about house rules for the use of a swimming pool, hot tub, or other body of water and appropriate safety precautions.

(b) Supervision and monitoring of safety features must be adequate to protect any child in care from unsupervised access to the swimming pool, hot tub, or other body of water.

(c) Caregivers must ensure that a child in care has access to a lifesaving device when using a swimming pool, hot tub, or body of water.

(d) A child in care participating in a swimming activity who is unable to swim must wear a personal flotation device (PFD). A PFD is a vest or suit designed to keep the wearer afloat in water and prevent drowning. The PFD must be:

(1) United States Coast Guard-approved with a rating of Type I, II, or III, or a buoyancy level of 70 or above; and

(2) properly fitted and fastened for the child.

(e) Caregivers must assess the swimming skills of a child in care before allowing the child in care into the swimming pool, hot tub, or any other body of water. The child-placing agency must document how the caregiver checked the swimming skills and keep this information in the record of the child in care.

(f) When watching a child in care in a swimming pool, hot tub, or any other body of water, caregivers must stay close by and pay attention to the child in care at all times. The caregiver must be able to see and hear the child in care and be ready to help in case of an emergency.

(g) Caregivers must be able to clearly see all parts of the swimming pool or hot tub when supervising activity in the area.

§749.1065. Swimming Ratios.

(a) There must be one caregiver to supervise each child under the age of two during swimming activities.

(b) If four or more children over the age of two participating in swimming activities, there must be at least two caregivers present supervising the activity area.

(c) There must be one caregiver to supervise each child who is non-ambulatory or who is subject to seizures during swimming activities. Caregivers do not need to meet this requirement if a licensed physician determines special precautions are not needed and documentation of the determination is maintained in the child in care's file.

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SUBCHAPTER I. FOSTER HOME MANAGEMENT AND EVALUATION

26 TAC §§749.1101, 749.1103, 749.1105, 749.1107, 749.1109

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas

Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1101. Foster Home Verification Change Management.

(a) A child-placing agency (CPA) must monitor a foster home (home) for changes that invalidate the home's verification.

(b) If something happens that makes a home's verification invalid, a new or temporary verification must be given after the CPA checks that the home follows the laws and rules in this chapter.

(c) Changes that automatically invalidate a home's verification include:

(1) marriage, divorce, separation, death, birth, or any other change in household composition;

(2) changes in the home's address or location;

(3) changes in the number of children a home may have in care;

(4) changes in the ages or sex of children for whom the home is authorized to provide care; and

(5) changes in the types of services the home will provide.

§749.1103. Foster Home Compliance Evaluation.

(a) A child-placing agency (CPA) must check each year to ensure a foster home (home) is following all the laws and rules that apply to the home.

(b) The CPA must evaluate a home's compliance with relevant laws and rules each time:

(1) there is an allegation of a deficiency in the home;

(2) there is a major life change in the home that invalidates the verification; or

(3) the CPA receives a report of family violence at the home from the Texas Department of Family and Protective Services.

(c) When a deficiency is found during an evaluation, the CPA must:

(1) develop a plan to achieve compliance that includes:

(A) a list of all the actions or changes the home needs to make to correct deficiencies, including:

(i) how much time the home has to correct the deficiencies; and

(ii) what will happen if the deficiencies are not corrected; and

(B) a decision about whether a child in care may stay in the home and if the home may accept a new child into care before the deficiencies are corrected; and

(2) ensure the home corrects any deficiencies by either inspecting the home again or obtaining proof that issues are corrected.

§749.1105. Foster Home Supervisory Visits.

(a) Child placing staff must visit the foster home (home) at least every three months for supervisory visits.

(b) The supervisory visits must happen inside the home.

(c) Within a 12-month period:

(1) two of the visits must be unannounced;

(2) one visit must have all household members present; and

(3) both foster parents, if there are two, must be present for one visit every six months.

(d) At least once every three months the supervisory visit must evaluate any:

(1) changes to household members, frequent visitors, or persons who will provide support as a caregiver during an unexpected event or crisis; and

(2) changes to the home that have an impact on the health, safety, or well-being of a child in care as determined by the child-placing agency.

§749.1107. Inactive Foster Homes.

(a) A child-placing agency (CPA) may place a foster home (home) on inactive status if the CPA makes sure there are no children in care. Inactive status cannot be used instead of closing the home if there are ongoing concerns that could harm the health or safety of a child in care.

(b) If the CPA puts a home on inactive status or takes the home off inactive status, the CPA must inform Child Care Regulation by submitting an Agency Home Report Form.

(c) A home on inactive status does not require monitoring or supervisory visits.

(d) If a home wants to have active status again and care for a child, the CPA must make a supervisory visit to the home to ensure it meets the laws and rules in this chapter before a child can be placed in the home.

(e) Background checks are not required for a home that is on inactive status. If the home returns to active status, the background checks must be active and in an Eligible or Conditional status before a child can be placed in the home.

§749.1109. Ongoing Monitoring Documentation Requirements.

A child-placing agency (CPA) must document and maintain the following information in the foster home's record.

(1) When checking the foster home (home) for compliance or completing a supervisory visit:

(A) the date the evaluation or supervisory visit was completed and the household members present;

(B) a summary of the topics talked about, which rules were checked, and any deficiencies found, signed by each foster parent present;

(C) the CPA's plan to correct any deficiencies found; and

(D) a follow-up plan including proof that all deficiencies have been corrected.

(2) For a home on inactive status:

(A) the agreement between the CPA and foster parents that the home will be placed on inactive status and will not accept placement; and

(B) when a home on inactive status wishes to return to active status, the CPA must check and ensure that the home is following

all laws and rules in this chapter and has done the necessary background checks. The CPA must document this before a child can be placed in the home.

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SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL

**26 TAC §§749.1201, 749.1203, 749.1205, 749.1207,
749.1209, 749.1211, 749.1213, 749.1215, 749.1217**

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1201. Admission Criteria.

(a) A child-placing agency (CPA) may admit a child or young adult for placement in a foster home (home) after ensuring:

- (1) the child or young adult meets the CPA's admission policy;
- (2) the CPA and foster home can provide the services the child or young adult requires; and
- (3) the home can meet the child or young adult's specific needs.

(b) The CPA may admit a young adult into the care of a home if the young adult:

- (1) comes immediately from another residential child-care operation;
- (2) will continue to need the same level of care and is unlikely to physically or intellectually progress over time; and
- (3) is in the care of the Texas Department of Family and Protective Services.

(c) A child, at least 14 years old, or young adult may be admitted to a CPA's transitional living program as a non-emergency admission.

§749.1203. Initial Requirements at the Time of Admission or Verification.

(a) For each child in care living in the foster home (home) at the time of verification or who is subsequently placed in the home, a child-placing agency (CPA) must obtain the following information, if available, before verifying the home or admitting the child into care:

- (1) the child's name, and date of birth;
- (2) a brief description of the circumstance that led to the reason the child needs a placement and the reason the last placement ended;
- (3) the child's current health status, chronic or acute health conditions, such as asthma, diabetes, special dietary needs, allergies, and medications the child is taking, including possible side effects;
- (4) identification of the child's immediate treatment and educational needs;
- (5) identification and assessment of any of the child's high-risk behaviors, the results of the suicide risk screening, and supervision needs; and
- (6) known contraindication to the use of restraint.

(b) The CPA must provide prospective caregivers with the child's initial admission information within 24 hours after the date of admission.

§749.1205. Admission Assessment.

(a) A child-placing agency (CPA) must complete the admission assessment within 15 days after the date of admission. The admission assessment for a child in care must include:

- (1) legal status, and the circumstances that led to the referral for foster care;
- (2) all history of abuse, neglect, or exploitation and history of trauma;
- (3) current medical status, including the:
 - (A) results of the most recent medical and dental examinations;
 - (B) all medical diagnoses requiring treatment services; and
 - (C) results of all psychiatric, psychological, or psychosocial assessments;
- (4) mental and behavioral health history, including substance use history;
- (5) developmental and educational history;
- (6) social history, including the home environment, the quality of family relationships, family functioning, and religion;
- (7) criminal history, if applicable; and
- (8) documentation of how the CPA can meet the needs and behaviors of the child in care, and the services the CPA plans to provide to the child in care.

(b) If a child in care receives treatment services for primary medical needs, the admission assessment must also include:

- (1) confirmation that the child in care can live safely in a foster home setting and that the foster parents have the skills to meet the needs of the child in care; and
- (2) all physician orders related to the child in care.

(c) The admission assessment must be given to the caregivers and professional service providers who are working with the child in care within five days after the assessment is finished.

§749.1207. Admission Orientation Requirements.

(a) Within seven days after the date of admission, a child-placing agency (CPA) must provide an orientation to each child in care who is at least five years old or older. The orientation must be easy for the child in care to understand, in the main language and communication method of the child in care, and suitable for the age of the child in care.

(b) Orientation must include information about the CPA's child-care policies.

§749.1209. Placement Agreement.

(a) A placement agreement is a child-placing agency's (CPA's) agreement with the foster child's parent or the foster child that defines the CPA's roles and responsibilities and authorizes the CPA to obtain or provide services for the foster child. A CPA placement agreement must include:

(1) authorization from the parent permitting the CPA to care for the child in care;

(2) the reason for placement and anticipated length of time in care; and

(3) a medical consent form signed by the parent.

(b) For a transitional living program, a child 16 years old or older in care may sign the placement agreement without parental consent if the child in care:

(1) resides separately from the parent, independently manages the financial affairs of the child in care, is unmarried and pregnant, or a parent; and

(2) the CPA attempts to notify the parent of the child in care of the location of the child in care.

§749.1211. Pre-Placement Requirements.

(a) Before placement, child placement staff must:

(1) ensure the placement is suitable for the needs and behaviors of the child in care by using the initial admission information and the home study for the foster home; and

(2) talk to the child in care about why the child in care is being placed and confirm the understanding and response of the child in care.

(b) For non-emergency placements, a child at least six months of age or older in care must visit the foster home at least once before placement.

(c) During the pre-placement visit, child placement staff must observe the interaction between the child in care and household members.

(d) There must be time between the pre-placement visit and placement to allow the child in care and foster parents to each meet privately with child placement staff to discuss and consider placement.

§749.1213. Post-Placement Contacts.

(a) Child placement staff must have monthly face-to-face contact with each child in care.

(b) Monthly visits must meet the following requirements.

(1) At least half of the contacts must occur in the foster home.

(2) The child placement staff must ensure the child in care is safe and the basic needs of the child in care are being met.

(3) The visits must:

(A) be for a length of time to address the needs and behaviors of a child in care who is verbal, or observe the child in care if they are non-verbal;

(B) provide an opportunity to meet privately; and

(C) provide an opportunity for the child in care to discuss feelings about how the placement is working out.

§749.1215. Ongoing Placement of Young Adults.

(a) A young adult may remain in care until the young adult is 23 years old to:

(1) attend high school, a program leading to a high school diploma, or GED classes;

(2) transition to independence, including attending college or vocational or technical training;

(3) complete a child-placing agency's program; or

(4) stay with a minor sibling.

(b) A young adult who turns 18 years old while in the care of a foster home may remain in care indefinitely, if the person:

(1) continues to need the same level of care; and

(2) is unlikely to physically or intellectually progress over time.

§749.1217. Admission and Placement Information Documentation.

A child-placing agency (CPA) must document and maintain the following information in the record of the child in care:

(1) the initial admission information obtained, including the date of admission, why any initial admission information could not be obtained, if applicable, and the date the prospective caregiver was provided the information;

(2) admission orientation provided to the child in care, if the child in care is at least five years old or older, including the date the orientation occurred;

(3) the admission assessment, including the date the information was provided to the caregivers and professional service providers working with the child in care;

(4) the signed and dated placement agreement;

(5) attempts to notify a parent of the location of the child in care, if the child in care is signing the placement agreement without parental consent; and

(6) the pre-placement visit and post-placement meeting details, including topics discussed and the dates each visit and meeting occurred.

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SUBCHAPTER K. SERVICE PLANNING AND DISCHARGE

DIVISION 1. SERVICE PLANNING

26 TAC §§749.1231, 749.1233, 749.1235, 749.1237

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1231. *General Service Plan Requirements.*

(a) A child-placing agency (CPA) must use and follow the most recent service plan for a child in care.

(b) To meet service plan requirements, the CPA must:

(1) use the most recent service plan for the child in care, developed by the agency that referred the child in care for placement, if the plan meets the criteria established in this division; or

(2) complete the initial service plan and service plan reviews using the criteria established in this division.

(c) The CPA must allow a child in care to help develop the service plan for the child in care.

(d) The CPA must provide the service plan to the child in care, the caregivers for the child in care, and the professionals working with the child in care within five days after the plan is finished.

§749.1233. *Initial Service Plan Requirements.*

(a) A service planning team must meet to develop an initial service plan for a child in care using the information obtained from the admission assessment.

(b) The initial service plan must identify and address:

(1) medical, dental, dietary, and therapeutic needs, including psychotropic medications;

(2) educational needs, and needs related to intellectual and developmental functioning;

(3) behavioral and supervision needs, including plans to minimize the risk of harm to the child in care or others for a child in care who exhibits high-risk behaviors; and

(4) the trauma of the child in care, including how the child in care copes, and appropriate redirection and discipline methods.

(c) For a child in care receiving any treatment services, the initial service plan must explain why the child in care needs treatment services and what goals the child in care needs to reach to live in a less restrictive setting.

(d) For a child in care receiving treatment services because of an intellectual disability, the initial service plan must identify and address:

(1) plans to engage the child in care in opportunities for visual, auditory, and tactile stimulation; and

(2) an educational or training plan for normalcy aligned to the functioning of the child in care.

(e) The initial service plan must be finished within 60 days after the child is admitted into care. The plan must include the signatures of the people who helped develop the plan.

(f) The service planning team must check and update the service plan at least every 180 days after the date of the last service plan for the child in care. The review must consider the progress of the child in care, identify any new needs for the child in care, and make a plan to meet these new needs for the child in care.

§749.1235. *Service Plan Requirements for Children in Care Receiving Treatment Services.*

For a child in care receiving treatment services for emotional disorders, autism spectrum disorder, or intellectual disabilities, the child-placing agency must obtain a written, dated, and signed psychosocial assessment, or equivalent assessment or evaluation, completed within:

(1) 14 months after the date of admission, if the child in care is coming from another regulated residential child-care operation; or

(2) six months after the date of admission if the child in care is not coming from another regulated residential child-care operation.

§749.1237. *Service Plan Documentation Requirements.*

A child-placing agency must maintain the following documentation in the record of a child in care:

(1) the initial service plan or most recent service plan developed by the agency that referred the child for placement; and

(2) the psychosocial assessment or equivalent assessment or evaluation, if applicable.

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

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Karen Ray

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DIVISION 2. DISCHARGE AND TRANSFER PLANNING

26 TAC §749.1251, §749.1253

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In

addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1251. Discharge and Transfer Requirements.

(a) The child-placing agency (CPA) must:

(1) have at least one person from the service planning team for a child in care help with planning the discharge or transfer for the child in care;

(2) consult with the service planning team about whether the child in care should be told in advance about the discharge or transfer and follow the team's recommendations; and

(3) If the service planning team decides the child in care should be told in advance about the discharge or transfer, the child in care must be informed at least four days before the date of discharge or transfer.

(b) The CPA may discharge a child in care to:

(1) the parent of the child in care;

(2) anyone with written authorization from the parent; or

(3) a person authorized by a court or by law to assume custody of the child in care.

(c) When discharging or transferring a child in care the CPA must:

(1) ensure one of the caregivers for the child in care or child placement staff goes with the child in care to the new placement unless the parent of the child in care or law enforcement is transporting the child in care;

(2) provide the prescribed medications for the child in care to the person the child in care is discharged or transferred to; and

(3) provide the belongings of the child in care to the child, the parent of the child in care, or the person the child in care is discharged or transferred to.

(d) The CPA must provide a discharge or transfer summary to the receiving placement or caregiver within 15 days after the child in care is discharged or transferred, which includes:

(1) a summary of:

(A) services provided to the child in care;

(B) an assessment of the current behaviors and needs of the child in care, and recommended services to meet those needs;

(C) upcoming appointments; and

(D) identified resources to support the child in care with the transition, including contact information; and

(2) The background information of the child in care, including unresolved incidents or investigations, and previous assessments and evaluations performed.

§749.1253. Discharge and Transfer Documentation Requirements.

A child-placing agency (CPA) must document and maintain the following information in the record of the child in care:

(1) the response of the child in care to the discharge or transfer;

(2) if the child in care was not told about the discharge or transfer, an explanation of why the child in care was not told; and

(3) the written discharge or transfer summary, including the date it was provided to the receiving placement or caregiver.

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**SUBCHAPTER L. FOSTER CARE SERVICES:
EMERGENCY BEHAVIOR INTERVENTION**

26 TAC §§749.1301, 749.1303, 749.1305, 749.1307

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1301. Child-Placing Agency Responsibilities Related to Child Rights.

(a) A child-placing agency (CPA) must protect the rights of a child in care and ensure caregivers and adoptive parents do not take away or limit the child's rights while the child is in care.

(b) The CPA is responsible for removing the child in care from a situation where abuse, neglect, or exploitation exists.

(c) The CPA must review the child's rights with the child in care and the parent of the child in care unless the parent's consent is not required. The CPA must also provide the child in care and the parent of the child in care a written copy of the child's rights.

(d) Child rights must be:

(1) written in plain language; and

(2) given in a way that is easy for the individual to understand.

§749.1303. Child Rights.

The rights of a child in care include any other rights given by law or other Child Care Regulation rules. A child-placing agency (CPA) must follow the child's rights, which include the following.

(1) Safety and care.

(A) The right to care and treatment that meets the needs of the child in care in the most family-like setting possible.

(B) The right to be free from abuse, neglect, and exploitation.

(C) The right to fair treatment.

(2) Family contacts. The right to maintain regular contact with the parents, siblings, and other extended family of the child in care, unless restrictions are necessary to protect the health, safety, or well-being of the child in care, as determined by the service plan or a court order.

(3) Living a normal life.

(A) The right to communicate in the way the child in care prefers. The CPA must make every reasonable effort to place the child in the care of foster parents who can communicate with the child.

(B) The right to receive educational services appropriate to the age and developmental level of the child in care.

(C) The right to have the religious needs of the child in care met.

(D) The right to participate in childhood activities, including those with the foster family and other activities outside the home, suitable for the age and development of the child in care.

(E) The right to privacy, which includes sending and receiving unopened mail, making and receiving phone calls, keeping a personal journal, and having visitors, unless it is necessary to limit these activities to keep the health, safety, or well-being of the child in care protected, as determined by the service plan or a court order.

(F) The right to personal care, hygiene, grooming equipment and supplies, and training in how to use them.

(G) The right to have comfortable clothes, including shoes, that fit well and are similar to what other children in the community wear and teenagers should have opportunities to pick out their own clothes.

(H) The right to clothing and shoes that protect the child in care against the weather.

(I) The right to have personal items at the foster home of the child in care and to get additional personal items when needed.

(J) The right to personal space in the sleeping space of the child in care to store clothes and belongings.

(K) The right to be informed of search policies and be free of unreasonable searches and unreasonable removal of personal items.

(L) Depending on the age and maturity of the child in care, the right to seek employment, keep money belonging to the child in care, and have a bank account in the name of the child in care.

(M) The right to consent in writing before taking part in any publicity or fund-raising activity for the home or the CPA, including the use of the photograph of the child in care, and to withdraw the consent.

(N) The right to refuse to make public statements showing gratitude to the home or the CPA.

(O) The right to not be pressured to make a medical decision about a pregnancy, give up a child for adoption, or parent the child, if applicable.

(4) Discipline.

(A) The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating treatment or punishment; this means the child in care must not be:

(i) shaken;

(ii) subjected to or threatened with corporal punishment, including spanking or hitting the child in care;

(iii) forced to be outside in excessive heat or cold for excessive periods;

(iv) forced to do unproductive work that serves no purpose except to demean the child in care, such as moving rocks from one pile to another or digging a hole and then filling it in;

(v) denied food, sleep, a bathroom, mail, or family visits as punishment;

(vi) subjected to remarks that belittle or ridicule the child in care or the family of the child in care;

(vii) threatened with the loss of placement or shelter as punishment;

(viii) subjected to demeaning behavior to embarrass, control, harm, intimidate, or isolate the child, "demeaning behavior" may include using physical force, rumors, threats, or inappropriate comments; and

(ix) subjected to emergency behavior intervention, aversive conditioning, or rebirthing, hug, or holding therapy.

(B) The right to discipline that is appropriate to the age, maturity, and developmental level of the child in care.

(C) The right to have restrictions or disciplinary policies explained to the child in care at admittance and when the measures are imposed.

(5) Plans for the child while in care.

(A) The right to have a comprehensive service plan that addresses the needs of the child in care, including transitional and discharge planning.

(B) The right to actively participate in the development of the service plan within the limits of the comprehension of the child in care. The child in care has the right to a copy or summary of the plan. A child 14 years old or older in care has the right to review and sign the service plan.

(6) Medical care and records.

(A) The right to medical, dental, vision, and mental health care and developmental services that adequately meet the needs of the child in care.

(B) The right to request that the care or services be separate from adults (other than young adults in care) who are receiving services.

(C) The right to be free of unnecessary or excessive medication.

(D) The right to confidential care and treatment, including keeping medical records and agency records private and only discussing the records when necessary to provide the child with care.

(7) Complaints.

(A) The right to make anonymous calls, reports, or complaints without interference, coercion, punishment, retaliation, or threats of punishment or retaliation.

(B) The child in care has the right to contact:

(i) the Texas Department of Family and Protective Services Abuse/Neglect Hotline;

(ii) the Texas Health and Human Services Commission Ombudsman for Children and Youth in Foster Care;

(iii) the DFPS Office of Consumer Affairs; and

(iv) Disability Rights Texas.

§749.1305. Conducting Searches for Items that Endanger a Child's Safety.

(a) For a child in care, an employee or caregiver may conduct a physical search of the child, the clothing or possessions of a child in care, or the room of a child in care only when there is reasonable suspicion that:

(1) an unlawful or prohibited item is present that endangers the safety of the child in care;

(2) the child in care made suicidal threats or threatened to self-harm or hurt others; or

(3) the child in care is suspected of or was involved in a theft.

(b) If a search of a child in care involves the removal of clothing (other than outer clothing such as coats, jackets, hats, gloves, shoes, or socks):

(1) only a caregiver that is the same sex as the child in care may conduct the search;

(2) there must be an adult witness who is the same sex as the child in care; and

(3) the caregiver must ensure that other children do not witness the search.

(c) With the exception of the mouth of a child in care, a caregiver or employee may not conduct a body cavity search of a child in care.

§749.1307. Child Rights Documentation Requirements.

A child-placing agency (CPA) must document and maintain the following information in the record of the child in care.

(1) A statement signed within seven days after the CPA admits a child into care that each required individual reviewed and understood the child's rights. A signed copy of the "CPS Rights of Children and Youth in Foster Care" meets this requirement.

(2) Plans for contact between the child in care and a parent and the child in care and the siblings of the child in care, including any restrictions the CPA places on the contacts.

(3) When conducting a search that results in the removal of personal items or clothing worn by the child in care the:

(A) name of the child in care, date of the search, and name of the person conducting the search, including any witnesses;

(B) reason for the search and a description of what was searched, including the articles of clothing removed, if applicable; and

(C) results of the search and resolution of the issue with the child in care.

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SUBCHAPTER M. DAILY CARE, EDUCATION, AND DISCIPLINE

26 TAC §§749.1401, 749.1403, 749.1405, 749.1407, 749.1409, 749.1411, 749.1413, 749.1415, 749.1417, 749.1419, 749.1421, 749.1423

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1401. Infants: Basic Care and Supervision.

(a) Each infant in a foster home must receive individual attention, including play, talking, cuddling, and holding.

(b) A caregiver must provide prompt attention to an infant's physical needs, such as feeding and diapering.

(c) A caregiver must ensure that the environment is safe for each infant, including:

(1) keeping the area free of objects that may choke or harm the infant; and

(2) protecting the infant by ensuring electrical outlets have childproof covers or safety outlets.

(d) Items necessary for diaper changing must be kept out of the reach of infants and other children in care.

(e) A caregiver must never leave an infant unsupervised.

(1) a sleeping infant is considered supervised if the caregiver:

(A) is within eyesight or hearing range of the infant and can intervene as needed; or

(B) uses a video camera or audio monitoring device to monitor the infant and is close enough to the infant to intervene as needed.

(2) An awake infant is considered supervised if the caregiver is within eyesight of the infant and is close enough to the infant to intervene as needed. For short periods of time during regular household activities, the infant may be out of the caregiver's sight, as long as:

(A) the infant is within hearing range of the caregiver;

ards; and

(B) the infant's environment is free of any safety haz-

(C) the caregiver can intervene immediately, as needed.

§749.1403. Infants: Cribs.

(a) A foster home (home) that provides care to a child in care who is an infant must have an individual crib for the infant. All cribs must:

(1) have a firm, flat mattress that snugly fits the sides of the crib, and the mattress must not be supplemented with additional foam material or pads and must be waterproof or washable;

(2) have sheets that fit snugly and do not present an entanglement hazard;

(3) be bare, except for a mattress with a tight-fitting sheet, for an infant who is younger than 12 months old; and

(4) be assembled per the manufacturer's instructions with no loose hardware, damaged parts, or entrapment hazards.

(b) A home may use a full-sized, portable, or mesh-side crib if:

(1) the caregivers follow the manufacturer's instructions; and

(2) the crib has mesh that is securely attached to the top of the rails and floor plate, and the folded sides are securely latched in place when raised.

(c) The home may not use a stackable crib, bean bag, waterbed, or foam pad as sleeping equipment for an infant.

(d) A caregiver must never leave an infant in a crib, portable crib, or mesh-side crib with a side folded down.

(e) An infant receiving treatment services for primary medical needs may have special items that assist with safe sleep at the written recommendation of a health-care professional. The child-placing agency (CPA) must keep the written recommendation in the record of the child in care.

(f) The CPA must notify the parent of each child in care of each home verified by the CPA of any deficiencies relating to subsections (a)(1), (a)(3), (b), or (c) of this section.

§749.1405. Infants: Safe Sleep Requirements.

(a) A caregiver must place an infant who is unable to turn over without assistance in a face-up sleep position unless a health-care professional orders otherwise. A child-placing agency (CPA) must keep any orders from a health-care professional in the record of the child in care.

(b) An infant's head, face, or crib must not be covered at any time by any item, including a blanket, linen, or clothing.

(c) An infant must not co-sleep with an individual at any time in any location.

(d) An infant must not sleep in a restrictive device, such as a car seat, swing, bouncy seat, or highchair. If an infant falls asleep in one of these devices, the caregiver must move the infant to a crib as soon as possible.

(e) An infant who can roll over without assistance must not be swaddled.

(f) The CPA must notify the parent of each child of each foster home verified by the CPA of any deficiencies cited in this section.

§749.1407. Infants: Equipment Safety.

(a) A highchair, swing, stroller, infant carrier, rocker, bouncer seat, or similar item that a foster home (home) uses for an infant must have safety straps fastened when the equipment is in use with the infant. The caregivers must follow the manufacturer's instructions.

(b) A home may not use any of the following types of equipment for infants:

(1) baby walkers;

(2) baby bungee jumpers; and

(3) accordion safety gates.

§749.1409. Infants: Feeding Requirements.

(a) Caregivers must feed an infant based on the recommendations of the infant's health-care professional.

(b) Unless recommendations from the health-care professional are contrary, caregivers must hold the infant while feeding the infant if the infant is:

(1) birth through six months old; or

(2) unable to sit unassisted in a highchair or other seating equipment during feeding.

(c) Caregivers must never prop a bottle by supporting it with anything other than the infant's or caregiver's hands.

(d) A caregiver who cares for more than one infant must:

(1) sterilize shared bottles or training cups between uses by different infants; and

(2) clean highchair trays before each use.

§749.1411. Toddlers: Basic Care Requirements.

(a) Each toddler must receive individual attention, including play, talking, and cuddling.

(b) A caregiver must ensure that the environment is safe for each toddler, including:

(1) keeping the area free of objects that may choke or harm the toddler; and

(2) protecting the toddler from dangerous items or areas, such as ensuring each accessible electrical outlet has a childproof cover or safety outlet.

(c) A caregiver must never leave a toddler unsupervised. A toddler is supervised if the caregiver:

(1) is within eyesight or hearing range of the toddler and can intervene as needed; or

(2) uses a video camera or an audio monitoring device to monitor the toddler and is close enough to the toddler to intervene as needed.

§749.1413. Additional Requirements for Pregnant Children in Care.

For a pregnant child in care, a child-placing agency must:

(1) ensure information, training, and counseling is available about pregnancy, prenatal care, childbirth, and recovery from childbirth; and

(2) inform the child in care, within seven days after the date of admission or on learning about the pregnancy, of the right not to be pressured to make a medical decision about the pregnancy, give up the child for adoption or parent the child.

§749.1415. Additional Requirements for Children in Care Receiving Treatment Services for Primary Medical Needs or Intellectual Disabilities.

(a) A caregiver who cares for a child in care receiving treatment services for primary medical needs or an intellectual disability must follow recommendations from the medical providers for the child in care, including recommendations relating to physical and sensory stimulation.

(b) A caregiver must ensure a child in care receiving treatment services for primary medical needs or an intellectual disability has opportunities for physical and sensory stimulation.

§749.1417. Discipline and Punishment.

(a) Only a caregiver known to and knowledgeable of a child in care may discipline the child.

(b) All disciplinary measures used with a child in care must be consistent with the child's rights related to discipline and punishment in this chapter.

§749.1419. Normalcy and Reasonable and Prudent Parent Requirements.

A foster parent must ensure a child in care has the opportunity to participate in childhood activities, including unsupervised activities, using the reasonable and prudent parent standard. For a child in care, the foster parent must consider the:

(1) age, level of maturity, overall abilities and developmental level, and desires; and

(2) behavioral history and ability to safely participate in a proposed activity considering the surrounding circumstances, hazards, risks, and supervision of the activity.

§749.1421. Educational Services: General.

A child-placing agency (CPA) must arrange appropriate education for each child in care, including:

(1) ensuring each child in care attends an educational facility or program that is accredited or otherwise recognized by state law and is the least restrictive educational setting to meet the needs and abilities of the child in care;

(2) advocating for the child in care to receive educational and related services to which the child in care is entitled under provisions of federal and state law and regulations, including the implementation of an Individual Education Plan (IEP) for students receiving special education services;

(3) ensuring that the education program is appropriate to the intellectual and social functioning of the child in care and encourages normalization through appropriate stimulation and by encouraging self-help skills; and

(4) designating a liaison between the CPA and the school of the child in care.

§749.1423. Educational Services: Caregiver Responsibilities.

Caregivers must:

(1) know how the child in care is doing in school by looking at the report cards and other information about the child in care from the school;

(2) request Admission, Review, and Dismissal (ARD), Individual Education Plan (IEP), and Individual Transitional Planning (ITP) meetings, if concerned with an education program for a child in care or if the child in care does not appear to be making progress;

(3) attend ARD, IEP, ITP meetings, or other school staffings and conferences to represent the educational best interests of a child in care; and

(4) know what is in the IEP or ITP for a child in care and support the school's efforts to implement the IEP or ITP, if applicable.

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SUBCHAPTER N. MEDICAL AND DENTAL REQUIREMENTS

26 TAC §§749.1501, 749.1503, 749.1505

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1501. General Medical, Dental, and Medication Requirements.

(a) A child in care must receive timely routine and emergency medical and dental care.

(b) At admission, a child-placing agency (CPA) must verify whether a child in care has had a medical examination within the past year and a dental examination within the past year, if the child in care is at least six months old. If the CPA determines that a child in care has not had one of these examinations during that time frame, the CPA must schedule any medical or dental examinations the child in care may need.

(c) Only someone who is trained and allowed to provide medicine can do so.

(d) The CPA must ensure caregivers follow orders and recommendations from a physician or other health-care professional.

(e) All medications must be stored securely and properly according to the label's instructions and in a way that makes the medications inaccessible to children in care.

§749.1503. Immunization Requirements.

A child-placing agency must ensure each child in care meets and continues to meet applicable immunization requirements as specified by the Texas Department of State Health Services.

§749.1505. Documentation Requirements for Medical and Dental Care.

(a) A child-placing agency (CPA) must verify that the following is documented either in the record or in the health passport, if applicable, of a child in care:

(1) each medical and dental visit or hospitalization, including a discharge summary;

(2) applicable immunization requirements; and

(3) any known contraindicated prescription, non-prescription medications, and supplements.

(b) The foster home must document and maintain in the record of a child in care:

(1) a daily medication log for each prescription medication administered to a child in care of any age, and non-prescription medication or supplement dispensed to a child in care under five years old; and

(2) documentation of all medication errors, adverse reactions, and side effects of a medication.

(c) The CPA must provide the daily medication log to the foster parents. The log must include:

(1) the name of the child in care and the person who administered the medication or supplement;

(2) the name, strength, and dosage of the medication or supplement administered; and

(3) the date and time the medication or supplement was administered.

(d) The CPA must provide the documentation form for medication errors, adverse reactions, and side effects to the foster parents. The form must include:

(1) the name of the child in care;

(2) the name of the medication;

(3) a description of the error, adverse reaction, or side effect; and

(4) how the caregiver ensured the safety of the child in care.

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SUBCHAPTER O. EMERGENCY BEHAVIOR INTERVENTION REQUIREMENTS
DIVISION 1. ADMINISTERING EMERGENCY BEHAVIOR INTERVENTION

26 TAC §§749.1601, 749.1603, 749.1605, 749.1607

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1601. Types of Emergency Behavior Intervention (EBI).

(a) A child-placing agency (CPA) must use a method of emergency behavior intervention (EBI) recognized by Child Care Regulation.

(b) EBI may only be used in a situation where preventative de-escalation and redirection has not effectively reduced the risk of injury, so immediate intervention is necessary to prevent:

(1) imminent probable death or substantial physical injury to the child in care; or

(2) imminent physical harm to another individual because of the overt actions of a child in care.

(c) A caregiver may only implement EBI using personal restraints, short personal restraints, and emergency medication. A caregiver may not use chemical restraints, mechanical restraints or seclusion.

(d) A personal restraint uses physical force to restrict free movement of all or part of the body of a child in care to control physical activity. Only a caregiver allowed by the CPA's policies and trained in the CPA's EBI curriculum may administer a personal restraint.

(e) A transitional hold is a temporary restraint technique that lasts no longer than one minute as part of the continuation of a longer personal restraint.

(f) Short personal restraints are personal restraints lasting no longer than one minute that are used in urgent situations. Any caregiver may administer a short personal restraint.

(g) Emergency medications to modify the behavior of a child in care. Only a caregiver allowed by the CPA's policies and trained in the CPA's EBI curriculum may administer an emergency medication.

§749.1603. Administering Emergency Behavior Intervention (EBI) Requirements.

(a) Before administering an emergency behavior intervention (EBI), a caregiver must determine if an emergency situation exists.

(b) During an EBI, the caregiver must:

(1) use the minimal amount of reasonable and necessary physical force;

(2) protect the health, safety and well-being of a child in care; and

(3) explain to the child in care what behaviors are necessary to be released from the short personal or personal restraint and consider actions the caregiver can take to help the child in care de-escalate.

§749.1605. Restraint Minimum Safety Requirements.

(a) A caregiver must ensure each personal restraint and short personal restraint meets the following safety standards:

(1) the caregiver must ensure the child in care can still breathe, the airway of the child in care is not blocked, the caregiver can see the face of the child in care clearly, and the child in care can talk or show if the child in care is in distress;

(2) the limbs of the child in care are not twisted or placed behind the back of the child in care; and

(3) prone and supine restraints are only used:

(A) as a transitional hold during a personal restraint lasting no longer than one minute; and

(B) when other less restrictive interventions have proven to be ineffective.

(b) A child in care must be released from a personal restraint:

(1) immediately when an emergency health situation occurs, when emergency medication is administered, if applicable, or as soon as the emergency that initiated the intervention no longer exists; and

(2) no longer than 30 minutes from when the restraint was administered.

(c) A child in care must be released from a short personal restraint immediately after the danger is gone, or when the one-minute limit is reached.

§749.1607. Written Orders for Emergency Medication and Combinations of Emergency Behavior Intervention.

(a) A caregiver cannot provide emergency medicine or combinations of emergency behavior interventions to a child in care without a written order from a licensed physician or licensed psychiatrist.

(b) A child-placing agency (CPA) must ensure that the written orders are given to the parent and all the caregivers of a child in care. The CPA must ensure the caregivers follow these orders and that each order is placed in the record of the child in care.

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Health and Human Services Commission

Earliest possible date of adoption: March 15, 2026

For further information, please call: (512) 438-3269



DIVISION 2. FOLLOW-UP ACTIONS AND DOCUMENTATION

26 TAC §§749.1621, 749.1623, 749.1625

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas

Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1621. Restraint and Emergency Medication Follow-Up Actions Requirements.

(a) After the implementation of a personal restraint or use of emergency medication, the caregiver must:

(1) watch the child in care for signs of distress and talk to the child in care about what happened, including:

(A) the situation that required the implementation of the personal restraint or use of emergency medication;

(B) the ways the caregiver tried to de-escalate the child in care before implementing the personal restraint or using emergency medication and how the child in care reacted to the de-escalation and the type of emergency behavior intervention used; and

(C) what the child in care can do to regain self-control in the future, and how the caregiver can assist the child in care to de-escalate;

(2) offer the child in care the opportunity to return to regular activities; and

(3) make reasonable efforts to debrief with any child in care who saw what happened.

(b) Each caregiver who took part in the implementation of the personal restraint or use of emergency medication must talk with child placement staff about the incident within 72 hours after the incident.

§749.1623. Restraint and Emergency Medication Documentation Requirements.

(a) The caregiver who administered the personal restraint or emergency medication must document the following information in the record of a child in care:

(1) a description of the reasons for administering the personal restraint or emergency medication, the steps taken to de-escalate the behavior of the child in care, and the reaction of the child in care;

(2) each personal restraint or emergency medication administered, the name and dose of emergency medication used, if applicable, and the length of time the child in care was restrained;

(3) the name of the caregivers who administered the personal restraint or emergency medication and all witnesses to the personal restraint or emergency medication, and the incident that led to the personal restraint or use of emergency medication;

(4) all attempts to explain to the child in care what behaviors were necessary for release from the personal restraint;

(5) the condition of the child in care following the personal restraint or use of emergency medication, including adverse effects or injuries caused by the personal restraint or emergency medication and if the child in care received medical assistance or treatment; and

(6) the post-intervention discussion with the child in care and the actions taken to facilitate the return of the child in care to normal activities.

(b) Child placement staff must document the review of the use of the personal restraint or emergency medication within 72 hours of

the incident, including review of the documentation required in subsection (a) of this section.

§749.1625. Post-Restraint and Emergency Medication Parental Notification Requirements.

(a) No later than 72 hours after a personal restraint or emergency medication is administered, a child-placing agency must provide written notice to the parent of a child in care.

(b) The written notice must be maintained in the record for a child in care, and include:

(1) each personal restraint or emergency medication administered, including the name and dose of emergency medication used, if applicable, and the length of time the child in care was restrained; and

(2) the child's condition following the personal restraint or use of emergency medication, and if the child received medical assistance or treatment.

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

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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 438-3269



DIVISION 3. TRIGGERED REVIEWS AND ANNUAL OPERATION EVALUATION

26 TAC §§749.1631, 749.1633, 749.1635

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §542.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new sections affect Texas Government Code §524.0151 and HRC §42.042.

§749.1631. Triggered Reviews General Requirements.

(a) For a child in care, a triggered review of the placement, service plan, and orders or recommendations for emergency behavior intervention (EBI) for the child in care must occur no later than 30 days after:

(1) a personal restraint is administered on the same child in care:

(A) four times or more within a seven-day period;

(B) 13 times or more in a single 30-day period; or

(C) more often than a written order allows; or

(2) a caregiver administers emergency medication to the same child in care three times in a 30-day period.

(b) The service planning team for the child in care must participate in the triggered review. The child in care must be invited to participate.

(c) If there are four triggered reviews within a 90-day period:

(1) a mental health professional must examine the child in care to make recommendations regarding the use of EBI; and

(2) a child-placing agency must follow the mental health professional's recommendations.

§749.1633. Triggered Reviews Documentation Requirements.

(a) A child-placing agency must document and maintain the following when conducting a triggered review:

(1) a review of the records and orders of the emergency behavior interventions (EBI);

(2) a review of any potential medical or psychiatric reason for not using EBI on the child in care;

(3) identified behaviors and patterns, any significant events leading to the use of EBI, and attempted de-escalation methods; and

(4) alternatives to manage the behavior of the child in care and prevent the use of EBI in the future.

(b) Triggered reviews and any associated recommendations must be documented and maintained in the record of the child in care.

§749.1635. Annual Operation Evaluation.

(a) A child-placing agency (CPA) must complete an annual operation evaluation, which is a written review to ensure any type of emergency behavior intervention (EBI) is used safely, correctly, and effectively. During the evaluation, the CPA must document and review:

(1) the CPA's EBI policies and procedures, including the training policy and curriculum;

(2) the frequency, patterns, and effectiveness of the types of EBI techniques used in the CPA's foster homes;

(3) strategies to reduce the need for specific types of EBI used in the CPA's homes; and

(4) strategies to reduce the need for EBI at the CPA's homes overall.

(b) Every three months, the CPA must:

(1) collect, document, and review aggregate numbers of EBI by type of intervention; and

(2) report the information to Child Care Regulation no later than 15 days after the end of each quarter.

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

Filed with the Office of the Secretary of State on January 30, 2026.

TRD-202600416

Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES, AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §9.1, concerning the title insurance basic manual of rules, rates, and forms.

EXPLANATION. Amending §9.1 is necessary because the commissioner has issued Commissioner Order No. 2025-9697 to change the title insurance basic premium rates. These rates are included in the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual), which §9.1 adopts by reference. The Basic Manual contains all the substantive rules, rates, and regulations authorized by the Texas Title Insurance Act (Act).

The Act's purpose is to completely regulate the business of title insurance. This complete regulation includes what prices may be charged for title policies and endorsements, and what provisions are contained in those policies. Title insurers must charge the promulgated rates and use the promulgated policies.

The procedures contained in Insurance Code Chapter 2703 dictate how rates, forms, and other aspects of the title insurance business are changed. Insurance Code §2703.151 specifies that the commissioner fix and promulgate the premium rates to be charged by a title insurance company or by a title insurance agent for title insurance policies or for other forms prescribed or approved by the commissioner. For fixing rates, TDI is required to conduct a hearing where members of the public and individuals and groups who work in the industry may present evidence to the commissioner and make public comments.

The commissioner presided over a rate hearing under Insurance Code §2703.202(c) on December 12, 2025, where the Texas Land Title Association, the Office of the Public Insurance Counsel, Texans for Free Enterprise, and TDI staff presented their positions, analyses, and rate calculations. Members of the public were also invited to comment. On December 19, 2025, the commissioner ordered a 6.2% reduction to the title insurance basic premium rates that will be effective on March 1, 2026.

The order--Order No. 2025-9697--included a rate table that will supplant a rate table in the most recent version of the Basic Manual on March 1st. The Basic Manual is adopted by reference by §9.1. The proposed amendment to §9.1 ensures that the public is aware of the new basic premium rates by incorporating the order's rate table into the Basic Manual.

Order No. 2025-9697 changes the title insurance basic premium rates and also describes the commissioner's reasoning and consideration of all materials presented at the hearing, including public comments. It can be viewed on TDI's website at www.tdi.texas.gov/orders/index.html.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Nicole Elliott, director and chief actuary of the Property and Casualty Division's Property and Casualty Actuarial Office, has determined that during each year of the first five years the section as proposed is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering it, other than that imposed by statute. Ms. Elliott made this determination because the section as proposed does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the section.

Ms. Elliott does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the section as proposed is in effect, Ms. Elliott expects that administering it will have the public benefit of reducing closing costs for real estate transactions and ensuring that TDI's rules conform to Insurance Code Chapter 2703.

Ms. Elliott expects that the section as proposed will not increase the cost of compliance because this rule only updates the adoption-by-reference language in §9.1. The promulgated rate has already been changed by the commissioner's order and will take effect on March 1, 2026.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the section as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. This rule proposal updates the adoption-by-reference language in §9.1. The rate reduction will occur because of the commissioner's order.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Even if there were a cost, no additional rule amendments would be required under Government Code §2001.0045 because the amendments to the Basic Manual, adopted by reference in §9.1, are necessary to implement legislation. Insurance Code §2501.002 states that the purpose of the Texas Title Insurance Act is for TDI to completely regulate the business of title insurance, including setting the rates of all title insurance policies and endorsements sold. Given that legislative purpose, any changes to rates are necessary to implement the Act.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the section as proposed is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on March 16, 2026. However, the comment period for the commissioner's order that changed the rate ended on December 17, 2025, and comments about the rate itself and the evidence presented at the hearing are outside of the scope of this proposal. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on March 16, 2026. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the amendment to §9.1 under Insurance Code §§2501.002, 2551.003, 2703.151, 2703.201, 2703.202(g), 2703.208, and 36.001.

Insurance Code §2501.002 provides that the purpose of Title 11 of the Insurance Code is to completely regulate the business of title insurance including the issuance of policies to protect consumers and purchasers of title insurance policies and to provide adequate and reasonable rates of return for title insurance companies and title insurance agents.

Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that are necessary to accomplish the purposes of the Texas Title Insurance Act, Insurance Code Title 11.

Insurance Code §2703.151 requires the commissioner to fix and promulgate the premium rates to be charged by a title insurance company or by a title insurance agent for title insurance policies or for other forms prescribed or approved by the commissioner.

Insurance Code §2703.201 requires that the commissioner hold a hearing to fix premium rates.

Insurance Code §2703.202(g) requires that the commissioner issue a final order setting the premium rate following the conclusion of a hearing that is not conducted as a contested case hearing.

Insurance Code §2703.208 provides that an addition or amendment to the Basic Manual may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 9.1 implements Title 11 of the Insurance Code.

§9.1. *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.*

The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) as amended, effective March 1, 2026 [November 1, 2024]. The Basic Manual is available on the TDI website at www.tdi.texas.gov.

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

Filed with the Office of the Secretary of State on January 29, 2026.

TRD-202600365

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 15, 2026

For further information, please call: (512) 676-6555



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER F. ADVISORY COMMITTEES

40 TAC §702.506

The Department and Family Protective Services (DFPS) proposes new §702.506 in Title 40, Texas Administrative Code (TAC), Part 19, Chapter 702, Subchapter F, ADVISORY COMMITTEES, related to the newly established Child Protective Investigations (CPI) Advisory Committee.

BACKGROUND AND PURPOSE

House Bill (H.B.) 140, 89th Texas Legislature (Regular Session, 2025), abolished the Texas Family and Protective Services Council effective September 1, 2026, and established the Child Protective Investigations Advisory Committee (CPI Advisory Committee). As a state advisory committee, DFPS is required to adopt rules in accordance with Texas Government Code Chapter 2110, including rules that define the committee's purpose and tasks, describe how the committee will report to the agency, and specify the committee's duration (unless a specific duration is prescribed by statute).

SECTION-BY-SECTION SUMMARY

Proposed new §702.506 establishes the CPI Advisory Committee in rule; it describes, inter alia, the CPI Advisory Committee's purpose and tasks, annual reporting requirements, and sets for confidentiality and Open Meetings Act requirements. The rule also provides for the Committee's expiration in 2029 in accordance with statute. The new rule is necessary to comply with state law; Government Code Chapter 2110 requires state agencies that establish advisory committees to adopt rules.

FISCAL NOTE

Lea Ann Biggar, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the section(s) will be in effect, there will be fiscal implications to state or local governments as a result of enforcing and administering the section(s) as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect

- (1) the proposed rule(s) will not create or eliminate a government program;
- (2) implementation of the proposed rule(s) will not affect the number of employee positions;
- (3) implementation of the proposed rule(s) will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule(s) will not affect fees paid to the agency;
- (5) the amended and appealed rules will not create a new regulation;
- (6) the proposed rule(s) will not expand, limit, or repeal an existing rule
- (7) the proposed rule(s) will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Ms. Biggar has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule does not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section(s) as proposed.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is proposed by the Department of Family Protective Services.

PUBLIC BENEFIT

Ms. Biggar, Chief Financial Officer of DFPS, has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be improved oversight, transparency, and consistency in child protective investigations through the establishment of an advisory committee that reviews policies, training, and closed cases and provides recommendations to DFPS.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

DFPS invites comments on the proposed rule proposals. DFPS requests information related to the cost, benefit, or effect of the

proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments, questions, and information must be submitted no later than 30 days after the date of this issue of the *Texas Register*.

Electronic comments and questions may be submitted to Lauren Villa, Policy Attorney at Lauren.Villa@dfps.texas.gov or RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The new rule is proposed under Texas Human Resources Code §40.031, as enacted by H.B. 140, 89th Legislature (Regular Session, 2025) which requires DFPS to establish the Child Protective Investigations Advisory Committee. Government Code Chapter 2110 requires rules for state agency advisory committees. The rule is also proposed under Texas Human Resources Code §40.021 which provides that the Department of Family and Protective Services Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The proposed rule implements Texas Human Resources Code §40.031 and Government Code Chapter 2110.

§702.506. Child Protective Investigations Advisory Committee.

(a) Establishment. The Child Protective Investigations Advisory Committee (CPI Advisory Committee) is established in accordance with Human Resources Code Section 40.031.

(b) Purpose. The purpose of the CPI Advisory Committee is to advise and make recommendations to DFPS on improving the accuracy, consistency, and compliance of child protective investigations involving specified individuals responsible for a child's care, custody or welfare, namely a child's parent, guardian, managing or possessory conservator, or foster parent; a member of the child's family or household; or a person with whom the child's parent cohabits.

(c) Tasks. The CPI Advisory Committee, as directed by the Chair, shall advise and make recommendations to DFPS pursuant to Human Resources Code Section 40.031(a) and (b), which may include, but is not limited to:

(1) policies, procedures, training, monitoring, compliance, and oversight related to child protective investigations;

(2) improving accuracy, consistency and legal compliance of investigations, including protection of due process rights;

(3) engaging with legal stakeholders and courts;

(4) promoting data-informed models for investigations;

(5) identifying and monitoring challenges related to the department's interaction and collaboration with any external parties that participate in the investigation processes;

(6) addressing barriers to standardization and accountability measures; and

(7) providing a forum for public input.

(d) Reporting.

(1) The CPI Advisory Committee shall prepare and submit an annual report to the Governor, the Lieutenant Governor, the Speaker

of the House of Representatives, members of the Legislature, and the Commissioner. DFPS shall publish the report on its website.

(2) Any and all CPI Advisory Committee reports and recommendations are advisory in nature and do not obligate DFPS to take action.

(e) Bylaws. The CPI Advisory Committee may adopt bylaws, consistent with statute and rule, to further govern its internal practices. The bylaws may address membership, meetings, attendance requirements, notices, conflicts of interest, and other administrative or procedural matters necessary for the CPI Advisory Committee operation.

(f) Scope of Records. Any information including records provided by DFPS to the CPI Advisory Committee may only involve a closed investigation of persons described by Family Code Section 261.001(5)(A), (B), or (C) and are not pending an administrative review, State Administrative Office Hearing, or Suit Affecting the Parent Child Relationship.

(g) Confidentiality.

(1) Any information provided to the CPI Advisory Committee regarding a child protective investigation, including but not limited to information derived from investigation records, DFPS's determinations resulting from the investigation, and any advisory committee work product, is confidential under Texas Human Resources Code Section 40.031(j) and is not subject to disclosure under Government Code Chapter 552.

(2) CPI Advisory Committee work product includes but is not limited to any notes, summaries, analyses, drafts, emails, communications, deliberations, or recommendations created by or for the CPI Advisory Committee or that are created by a Member in connection with the Member's function as part of the CPI Advisory Committee as described in Human Resources Code Section 40.031(a) and (b).

(3) DFPS shall adopt and implement confidentiality procedures to ensure that confidential information provided to or derived from the CPI Advisory Committee is protected from unauthorized disclosure. Members must comply with these confidential procedures and shall sign a confidentiality agreement to ensure confidentiality of the information provided.

(4) Any information provided or disclosed to the CPI Advisory Committee, even if redacted, remains confidential.

(h) Open Meetings. The CPI Advisory Committee is subject to the Open Meetings Act, Government Code Chapter 551. The CPI Advisory Committee may conduct a closed meeting under Human Resources Code Section 40.031(h) in accordance with the Open Meetings Act to discuss information related to a case under review by the CPI Advisory Committee under Human Resources Code Section 40.031(i).

(i) Subcommittees. The CPI Advisory Committee may not establish or utilize any subcommittees or workgroups.

(j) Expiration. The CPI Advisory Committee is abolished, and this section expires, September 1, 2029.

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

Filed with the Office of the Secretary of State on January 27, 2026.

TRD-202600316

Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: March 15, 2026
For further information, please call: (512) 945-5978

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 858. PROCUREMENT AND CONTRACT MANAGEMENT REQUIREMENTS FOR PURCHASE OF GOODS AND SERVICES FOR VOCATIONAL REHABILITATION SERVICES

40 TAC §858.2

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 858, relating to Procurement and Contract Management Requirements for Purchase of Goods and Services for Vocational Rehabilitation Services, §858.2.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 858 rule change is to implement House Bill (HB) 2791, 89th Texas Legislature, Regular Session, 2025, which adds Texas Labor Code, §352.060.

Historically, TWC's Vocational Rehabilitation (VR) program operated under procurement authority derived from the Texas Health and Human Services Commission (HHSC) since the program's transfer to TWC in 2016. However, legislation passed during the 88th Texas Legislature (HB 4611) made nonsubstantive revisions to health and human services laws that had the unintended effect of removing the critical statutory connections that allowed TWC's VR program to use this authority.

Without corrective legislation, TWC's authority to use the non-competitive open enrollment procurement method--a method used for approximately 1,000 active provider contracts--was set to end. This would have jeopardized the timely delivery of essential goods and services for more than 27,000 VR participants annually.

HB 2791 was enacted to resolve this issue by adding Texas Labor Code, §352.060, which provides TWC with direct and explicit statutory authority to procure goods and services for the VR program, including the continued use of open enrollment solicitations and new authority for direct negotiation with qualified vendors. This rule amendment aligns TWC's rules with this new statutory authority.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

§858.2. Noncompetitive Open Enrollment Solicitation

Section 858.2 is amended to align with the new statutory authority provided by HB 2791, which adds Texas Labor Code, §352.060. This section affirms TWC's authority to use a non-competitive open enrollment solicitation for acquiring goods and

services for the VR program. It also outlines the conditions under which TWC may directly negotiate a contract if no responsive applications are received from an open enrollment solicitation, consistent with the provisions in the new statute.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rule.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule.

There are no anticipated economic costs to individuals required to comply with the rule.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rule.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement Texas Labor Code, §352.060, as added by HB 2791, to provide TWC with direct statutory authority to continue its existing procurement methods for VR goods and services, including open enrollment solicitations and direct negotiation.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental ac-

tion. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rule will be in effect, it:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand an existing regulation;

--will not change the number of individuals subject to the rule; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rule will not have an adverse economic impact on small businesses or rural communities, as the proposed rule places no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rule.

Tammy Ames, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to ensure the continuation of essential procurement methods for the VR program. This will allow for timely service delivery to VR participants with disabilities across the state by preventing the potential loss of providers that supply critical goods and services.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

This rulemaking implements statutory provisions as described in this proposed rule document. The public will have an opportunity to comment on the proposed rule changes as set forth below.

PART V. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rule or any other interested person, information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Please submit the requested information to TWCPolicyComments@twc.texas.gov no later than March 16, 2026.

PART VI. PUBLIC COMMENTS

Comments on the proposed rule may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than March 16, 2026.

PART VII. STATUTORY AUTHORITY

The rule is proposed under:

--Texas Labor Code, §352.060, as added by HB 2791, 89th Texas Legislature, Regular Session, 2025, which provides TWC the specific authority to adopt rules for the acquisition of VR goods and services, including rules allowing TWC to purchase VR services through open-enrollment solicitations and direct negotiation;

--Texas Labor Code, §352.103, which provides TWC with the authority to adopt rules for the provision of VR services; and

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule implements provisions of Title 4, Texas Labor Code, Chapter 352.

§858.2. Noncompetitive Open Enrollment Solicitation.

(a) General. The Agency may acquire goods or services through a noncompetitive open enrollment solicitation and enter into enrollment contracts with qualified contractors.

(1) An open enrollment solicitation must be conducted in an open and fair manner that reasonably provides interested, qualified contractors with an equal opportunity to obtain a contract or do business with the Agency.

(2) The Agency may consider all relevant factors, as set forth under Texas Labor Code, §352.060(c), [~~past performance~~] when determining whether to award a contract to an applicant.

(b) Direct Negotiation for Vocational Rehabilitation Services. In the event the Agency receives no responsive applications to an open enrollment solicitation for vocational rehabilitation goods or services in a specific area of the state, the Agency's Procurement and Contract Services (PCS) division may directly negotiate a contract under the following conditions:

(1) The Agency must first make a written determination that an award through the open market solicitation is not available;

(2) PCS may negotiate with and award a contract to any qualified vendor that meets the requirements of the original solicitation; and

(3) The resulting contract must be at a price consistent with the current market value of the services and have a term not to exceed five years.

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

Filed with the Office of the Secretary of State on January 28, 2026.

TRD-202600343

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 15, 2026

For further information, please call: (737) 301-9662



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) proposes amendments to §§2.201 - 2.206 and the repeal of §2.207, concerning Memorandum of Understanding with the Texas Parks and Wildlife Department (TPWD).

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

Transportation Code, §201.607, requires the department to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic or archeological resources. Transportation Code, §201.607, also requires the department to adopt the MOU and all revisions to it by rule and to periodically evaluate and revise the MOU. The department has evaluated its MOU with the Texas Parks and Wildlife Department (TPWD) adopted in 2021, and finds it necessary to make various changes to Chapter 2, Subchapter G, of the department's rules.

Amendments to §2.201, Purpose, update the references to the preceding MOU.

Amendments to §2.202, Definitions, delete the definition of "qualified biologist" because it is unnecessary and delete the definition of "riparian habitat" because it is not used in the revised rules. They also add a definition of "species of greatest conservation need (SGCN)." They also clarify that the TPWD Transportation Staff is assigned to work on TxDOT transportation projects specifically, and not transportation projects generally.

Amendments to §2.203, Applicability, revise the triggers for when the department must provide TPWD with an opportunity to review a reevaluation of a project to be more precise. They also specify that for a reevaluation the department need only discuss the project with TPWD instead of formally re-coordinating the project in writing.

Amendments to §2.204, Coordination and Communication, specify that written communication between the department and TPWD, in addition to electronic communication, will be used to the maximum extent practical. This is in recognition of TPWD's practice of providing comments in a letter format and not exclusively in an email format.

Amendments to §2.205, Commitments, relate to the inter-agency contract by which TxDOT provides funding for one TPWD transportation staff to review TxDOT projects. The amendments specify that TxDOT and TPWD may renew that interagency contract at the same time that the overall MOU in this Subchapter G is renewed, rather than biennially. They also clarify that the TPWD employee funded by TxDOT through the interagency contract is "transportation staff," which is a defined term in §2.202. They also remove a reference to an "associated workplan" in the context of mutually agreeable conservation actions as that term is not actually used by TxDOT and TPWD.

Amendments to §2.206, Interagency Team, add a provision requiring the TxDOT/TPWD interagency team to collaborate on identifying opportunities to enhance wildlife habitat connectivity

across Texas to improve terrestrial and aquatic species movements.

Section 2.207, Texas Natural Diversity Database (TXNDD), is repealed because in 2026 the data in the TXNDD will be publicly available and, therefore, the MOU provisions detailing how TxDOT accesses data from the TXNDD will no longer be needed.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Doug Booher, Director, Environmental Division has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Doug Booher has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be continued exchange of information between the department and TPWD regarding transportation projects and their potential impact on natural resources, and better informed decision-making by the department regarding the potential impacts of transportation projects. Additionally, improvements made by the proposed MOU compared to the existing one regarding coordination of reevaluations with TPWD should result in more efficient delivery of some transportation projects.

COSTS ON REGULATED PERSONS

Doug Booher has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Doug Booher has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rules would be in effect:

- (1) they would not create or eliminate a government program;
- (2) their implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) their implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) they would not require an increase or decrease in fees paid to the agency;

(5) they would not create a new regulation;

(6) they would not expand or limit an existing regulation, but would repeal existing §2.207 regarding the TXNDD because in 2026 the data in the TXNDD will be publicly available and, therefore, the MOU provisions detailing how TxDOT accesses data from the TXNDD will no longer be needed;

(7) they would not increase or decrease the number of individuals subject to its applicability; and

(8) they would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Doug Booher has determined that a written takings impact assessment is not required under Government Code, §2007.043.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The proposed rules are subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable CMP policies. The department has concluded that the proposed rules are consistent with all applicable CMP policies.

The CMP policies applicable to transportation projects are set forth at 31 TAC §26.31. This rulemaking does not dictate the siting of transportation projects or contain any other requirements that would contradict any of the CMP policies listed in that rule. Rather, it establishes a mechanism by which the department and TPWD can efficiently and appropriately exchange information regarding transportation projects and their potential impacts on natural resources, as required by statute at Transportation Code, §201.607, that is acceptable to both department and TPWD staff. None of the CMP policies listed at §26.31 pertain to the mechanism by which the department and TPWD exchange information. Additionally, the intent of the MOU is to foster communication, collaboration, and cooperation between TPWD and the department on the review of transportation projects and protection of State natural resources, which is generally in alignment with the overall purpose of the CMP policies listed at 31 TAC §26.31. For these reasons, this rulemaking is consistent with the CMP policies listed at 31 TAC §26.31.

A copy of this rulemaking will be submitted to the General Land Office for its comments on the consistency of the proposed rulemaking with the CMP. The department requests that the public also give comment on whether the proposed rulemaking is consistent with the CMP.

SUBMITTAL OF INFORMATION AND COMMENTS

Any person that is required to comply with the proposed rule or any other interested person may provide information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis, or may submit written comments on the amendments to §§2.201 - 2.206 and repeal of §§2.207. The information or comments must be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "TPWD MOU rulemaking." The deadline for receipt of the information or comments is 5:00 p.m. on March 16, 2026. In

accordance with Transportation Code, §201.811(a)(5), a person who makes a submission must disclose, in writing with the submission, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER G. MEMORANDUM OF UNDERSTANDING WITH THE TEXAS PARKS AND WILDLIFE DEPARTMENT

43 TAC §§2.201 - 2.206

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, §201.607, requiring the department to have an MOU with TPWD and to adopt it by rulemaking.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §§201.604, 201.607, and 201.752.

§2.201. Purpose.

(a) Transportation Code §201.607 requires the Texas Department of Transportation (TxDOT) to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources, and requires TxDOT and each of the agencies to adopt the memoranda and all revisions by rule. This subchapter contains the MOU between TxDOT and the Texas Parks and Wildlife Department (TPWD) that implements that section.

(b) This subchapter furthers TxDOT's environmental policy, as found in §2.2 of this chapter (relating to Environmental Policy), to integrate environmental considerations into department activities to achieve compliance with applicable laws, regulations and standards. TxDOT will focus on delivering safe, efficient transportation projects and making sound decisions based on a balanced consideration of transportation needs and of social, economic, and environmental impacts of proposed transportation improvements.

(c) According to Parks and Wildlife Code §12.0011, TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources; providing recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects; providing information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources.

(d) Except as specified in subsection (f) of this section, this MOU supersedes the MOU adopted by TxDOT and TPWD in 2021 [on September 1, 2013 and associated programmatic agreements]. Nothing in this subchapter supersedes, modifies, or nullifies any other agreement entered into by TxDOT and TPWD.

(e) TxDOT and TPWD shall examine and revise this MOU not later than the fifth anniversary of its effective date, as required by Transportation Code, §201.607. Notwithstanding the above, this MOU remains in effect until revised or terminated by written agreement of TxDOT and TPWD.

(f) The effective date of this MOU is the date on which this Subchapter G takes effect. Projects for which coordination with TPWD has been initiated prior to the effective date of this MOU will com-

plete coordination under the procedures of the 2021 [September 2013] MOU. Projects for which coordination with TPWD has not been initiated prior to the effective date of this MOU will be governed by this MOU. A project that requires reevaluation, and subsequently requires coordination as specified in §2.203 of this subchapter (relating to Applicability), will be governed by this MOU.

(g) The intent of the MOU is to foster communication, collaboration, and cooperation between TPWD and TxDOT on the review of transportation projects and protection of State natural resources.

§2.202. Definitions.

The following words and terms, when used in this subchapter, or in documents prepared by TxDOT or TPWD pursuant to this subchapter, have the following meanings.

(1) Best or Beneficial Management Practices (BMPs)--Measures provided by TPWD that will result in avoidance and minimization of potential impacts to natural resources.

(2) Categorical Exclusion (CE)--A category of actions that have been found to have no significant effect on the environment, individually or cumulatively, and are excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement as defined in §2.81 of this chapter (relating to Categorical Exclusions).

(3) Environmental Assessment (EA)--Environmental documentation required for a transportation project that TxDOT has not classified as a categorical exclusion and that does not clearly require the preparation of an EIS, or if TxDOT believes that an EA would assist in determining the need for an EIS, as defined in §2.83 of this chapter (relating to Environmental Assessments).

(4) Environmental decision--The official record created after coordination, analysis, and reviews are completed concluding that an action and its environmental impacts have been adequately identified and assessed. A Finding of No Significant Impact (FONSI) is the environmental decision document for an EA and a Record of Decision (ROD) is the environmental decision document for an EIS.

(5) Environmental Impact Statement (EIS)--Environmental documentation required for a transportation project if there are likely to be significant environmental impacts, as defined in §2.84 of this chapter (relating to Environmental Impact Statements).

(6) Interagency Team (IAT)--As defined in §2.206 of this subchapter (relating to Interagency Team), TPWD and TxDOT staff identified to communicate on behalf of TPWD and TxDOT to carry out the MOU.

~~[(7) Qualified biologist--A qualified biologist must have, at a minimum, a successful completion of a full 4-year course of study in an accredited college or university leading to a bachelor's or higher degree with a major in biological sciences, natural resource management, wildlife science or management, ecology, zoology, botany, conservation biology, or a closely related field and have experience relevant to the species, habitat, or ecosystems that are being studied or described.]~~

(7) [(8)] Reevaluation--The review and determination of the validity of the environmental decision under certain circumstances involving changes or delays subsequent to the environmental decision as defined in §2.85 of this chapter (relating to Reevaluations).

(8) Species of greatest conservation need (SGCN)--Species with low or declining populations in need of conservation action, including species at risk due to threats to their life history needs or habitats, species considered rare due to few, small, or declining populations, abundance, or distribution, and species with declining trends in their habitats and populations.

~~(9) Riparian habitat--The area of interface between land and a waterway (e.g., river or stream). River or creek-dependent habitats which rely on periodic flooding or flushing, subirrigated substrates, and other influences of the ephemeral or perennial rivers or creeks to which they are adjacent, including floodplains, wet woodlands, gallery riverine forests, oxbows, swamps, and vegetated islands.~~

~~(9) [(40)] Texas Natural Diversity Database (TXNDD)--A TPWD-owned and maintained database of natural resource records, including SGCN [species of greatest conservation need (SGCN)] and other tracked species, important remnant native vegetation, and other features of Texas natural history.~~

~~(10) [(41)] TPWD--Texas Parks and Wildlife Department.~~

~~(11) [(42)] TPWD Transportation Staff--The qualified biologist at TPWD that is assigned to work solely on TxDOT transportation projects and related matters.~~

~~(12) [(43)] TxDOT--Texas Department of Transportation.~~

§2.203. *Applicability.*

(a) TxDOT will coordinate with TPWD on federal and state transportation projects that require an EA or EIS.

(b) TxDOT may coordinate other projects that do not require an EA or EIS with TPWD at TxDOT's discretion.

(c) If TxDOT prepares a reevaluation for a transportation project that was previously coordinated with TPWD under any previous [the 2013] MOU, TxDOT will discuss the project changes with TPWD Transportation Staff [coordinate the reevaluation with TPWD] when any of the following apply:

(1) New impacts not included in previous coordination or increase in impacts from previous coordination to federal-listed or [terrestrial and aquatic] state-listed species, SGCN, [or their habitat as determined by a qualified biologist] or recorded rare plant communities [with a record] in the TXNDD [or any state rank or rank range that includes a 1, 2, or 3].

(2) New or increased impacts to [riparian habitat or] water resources that trigger a pre-construction notification or other permitting action with the U.S. Army Corps of Engineers.

(3) Change to commitments made during previous coordination, including BMPs.

~~[(4) Reevaluations of CE level projects with new or increased impacts may be re-coordinated at TxDOT's discretion.]~~

(d) This subchapter does not apply to individual maintenance projects for which a programmatic environmental review is conducted under §2.133 of this chapter (relating to Maintenance Projects and Programs).

§2.204. *Coordination and Communication.*

(a) For projects requiring an EA or EIS, TxDOT will contact TPWD when TxDOT has completed its analysis of potential impacts to fish, wildlife, and other natural resources. To facilitate collaborative review, TxDOT will provide TPWD access to TxDOT's Environmental Compliance Oversight System (ECOS).

(b) TxDOT will post the set of BMPs, as recommended by TPWD, on the Environmental Compliance Toolkit webpage [the set of BMPs as recommended by TPWD]. This set of BMPs is non-project specific. The application of specific BMPs to individual projects will be determined by TxDOT at its discretion.

(c) TxDOT will indicate in the draft EA or draft EIS the TPWD-recommended BMPs that will be applied to the project.

TxDOT may also include information shared by TPWD during collaborative review.

(d) To ensure TxDOT will benefit from any recommendations or information provided by TPWD early in the environmental review process, TxDOT will follow the procedure indicated below.

(1) At or around the same time that a draft EA or draft EIS is made available for public review, but no less than 45 days before the issuance of an environmental decision, TxDOT will email the notice of availability of the document required by §2.108 of this chapter (relating to Notice of Availability) to TPWD at the following email address: WHAB_TxDOT@tpwd.texas.gov or the email account designated by TPWD.

(2) The email communication described in subsection (1) will serve as the "request for comments" in Parks and Wildlife Code §12.0011(b-1).

(3) To facilitate review of a draft EA or EIS, TxDOT will provide access to TxDOT's ECOS.

(e) If TPWD has any information or recommendations to conserve fish and wildlife species and other natural resources it wishes to provide to TxDOT in response to a request for comments, TPWD will provide them in writing to TxDOT within 45 days of the date on which TxDOT submitted the request for comments by email.

(f) If TPWD provides any recommendations or information regarding fish and wildlife to TxDOT after the 45-day deadline specified in subsection (e) of this section, then TxDOT will consider such recommendations or information to the extent practicable.

(g) TxDOT will respond as outlined in Parks and Wildlife Code §12.0011(c).

(h) Written and electronic [Electronic] communication will be used to the maximum extent practical.

§2.205. *Commitments.*

(a) TxDOT will provide funding, through an interagency contract, for one TPWD Transportation Staff [employee] to review transportation projects under this agreement. TxDOT will actively and consistently engage this employee in project development, conservation actions, and other natural resource coordination needs as determined appropriate by TxDOT. The interagency contract to fund the review of transportation projects will be renewed with this MOU [biennially] at TxDOT's discretion.

(b) Through that same interagency contract or other authority as appropriate, TxDOT and TPWD will identify and collaborate on mutually agreeable conservation actions. Conservation actions to be undertaken will be described in detail in an interagency contract document [or associated workplan] agreed upon by the IAT.

§2.206. *Interagency Team.*

(a) Each agency shall mutually appoint members to IAT which will meet at least on a bi-annual basis.

(b) An Interagency Team shall discuss and make recommendations for opportunities for the agencies to partner on conservation actions including but not limited to research, offsets, specification development, and restoration opportunities. The IAT will collaborate on identifying opportunities to enhance wildlife habitat connectivity across Texas to improve terrestrial and aquatic species movements.

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

Filed with the Office of the Secretary of State on January 29, 2026.

TRD-202600376

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: March 15, 2026

For further information, please call: (512) 463-8630



43 TAC §2.207

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, §201.607, requiring the department to have an MOU with TPWD and to adopt it by rulemaking.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §§201.604, 201.607, and 201.752.

§2.207. *Texas Natural Diversity Database (TXNDD).*

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

Filed with the Office of the Secretary of State on January 29, 2026.

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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: March 15, 2026

For further information, please call: (512) 463-8630



CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER B. CONTRACTS FOR HIGHWAY PROJECTS

43 TAC §§9.12 - 9.15, 9.17

The Texas Department of Transportation (department) proposes the amendments to §§9.12 - 9.15 and 9.17, relating to Contracts for Highway Projects.

EXPLANATION OF PROPOSED AMENDMENTS

The purpose of this rulemaking is to clarify the rules of the Texas Transportation Commission (commission) concerning qualification of bidders, submittal and acceptance of bids, and award of contracts for highway projects administered by the department.

Amendments to §9.12, Qualification of Bidders, clarify that the "date of the financial statement" for the beginning of the 12-month period of prequalification refers to the "balance sheet date" to eliminate confusion. The amendments also clarify that only independent certified public accountancy firms may

provide attest services, in accordance with Texas Occupations Code, §901.451. For bidders qualifying under the Confidential Questionnaire, the rules currently grant a three-month grace period to allow bidders to prepare and submit updated financial information for the coming year's qualification. A longer grace period may be needed when a submittal is dependent on the completion of a parent company's financial information. The amendments extend the grace period to four months for all qualification levels, including qualification under the Confidential Questionnaire.

Amendments to §9.13, Notice of Letting and Issuance of Proposal Forms, standardize references to "the electronic bidding system" for clarity and consistency.

Amendments to §9.14, Submittal of Bid, clarify that, consistent with paper bid bonds, electronic bid bonds must be issued by authorized sureties, include the surety's seal, and be dated on or before the date of bid opening. The amendments also standardize references to "the electronic bidding system" for clarity and consistency.

Amendments to §9.15, Acceptance of Bids, allow a bid to be considered nonresponsive if the department discovers a discrepancy prior to contract award. Before recommending award of a contract, the department verifies information certified by the bidder. Currently, the department may consider a bid nonresponsive if the bidder fails to acknowledge a certification; however, there is no recourse short of rejecting all bids if the department discovers a discrepancy with a certification prior to award of the contract. The amendments allow the department to consider a bid to be nonresponsive in such a situation.

Amendments to §9.17, Award of Contract, authorize the department to delay its notification of contract award pending the resolution of railroad access agreements, third-party financial clearances, or other conditions that are not in the best interest of the state to address the situations in which there are requirements that restrict the department from proceeding immediately with contract execution.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Duane Milligan, P.E., Director, Construction Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Duane Milligan, P.E., has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be efficiency in award of contracts for highway projects and improving the clarity and readability of the rules.

COSTS ON REGULATED PERSONS

Mr. Duane Milligan, P.E., has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small business, micro-business, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Duane Milligan, P.E., has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Duane Milligan, P.E., has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Any person that is required to comply with the proposed rule or any other interested person may provide information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis, or may submit written comments on the amendments to §§9.12-9.15 and §9.17, to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Contracts for Highway Projects." The deadline for receipt of comments is 5:00 p.m. on March 16, 2026. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission

(commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.004, which authorizes the commission to adopt rules to prescribe conditions under which a bid may be rejected by the department and Transportation Code, §223.014, which requires the commission to adopt rules relating to a bid guaranty.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 223, Subchapter A.

§9.12. *Qualification of Bidders.*

(a) Eligibility. To be eligible to bid on a highway improvement contract, other than a building contract, or on a materials contract, potential bidders must satisfy the applicable requirements listed in this section.

(1) If the department has accepted from a person a properly completed Confidential Questionnaire, as described in subsection (c) of this section, and audited financial information, as described in subsection (b)(1) of this section, the person is eligible to bid on any project for which the person meets any necessary special technical qualification requirements, has sufficient available bidding capacity, as determined under subsection (e) of this section, and has submitted a properly completed Certification of Eligibility Status form if it is a federal-aid project.

(2) A person that has submitted only a Bidder's Questionnaire, as described in subsection (d) of this section, may bid only on a specified project for which the department has waived the requirements of paragraph (1) of this subsection. Such a project is referred to as a waived project and generally has one of the following characteristics:

- (A) the engineer's estimate for the project is less than \$1 million;
- (B) the project is a maintenance project;
- (C) the project is an emergency project;
- (D) the project contains specialty items not normal to the department's roadway projects program; or
- (E) the project is for the purchase of goods that may be purchased under a materials contract.

(3) A bidder that submits only a Materials Supplier's Questionnaire is eligible to bid only on a materials contract, including a materials contract awarded under §9.19 of this subchapter (relating to Emergency Contract Procedures).

(b) Financial Information. This section refers to three types of financial information.

(1) Audited financial information is information resulting from an examination of the accounting system, records, and financial statements by an independent certified public accountancy firm [accountant] in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial information in conformity with generally accepted accounting principles. A bidder that submits audited financial information, as required for a Confidential Questionnaire in accordance with subsection (c) of this section, is eligible to bid on all projects for which the bidder has available bidding capacity, as determined under subsection (e) of this section.

(2) Reviewed financial information may be used in a Bidder's Questionnaire under subsection (d) of this section. The scope of reviewed financial information is substantially less than audited

financial information, and the information is the result primarily of inquiries of company personnel and analytical procedures applied to financial data by an independent certified public accountancy firm [accountant]. Only negative assurance is expressed by the independent certified public accountancy firm [accountant], which means that the firm [independent accountant] is not aware of any material modifications that should be made in order for the financial information to conform to generally accepted accounting principles. A bidder that submits reviewed financial information is subject to the limitations described in subsections (d) and (e) of this section for a waived project.

(3) Compiled financial information also may be used in a Bidder's Questionnaire under subsection (d) of this section. Compiled financial information only presents information that is the representation of management. No opinion or other assurance is expressed by the independent certified public accountancy firm [accountant]. A bidder that submits compiled financial information is subject to the limitations described in subsections (d) and (e) of this section for a waived project.

(c) Confidential Questionnaire. A potential bidder must satisfy the requirements of this subsection to be eligible to bid on a highway improvement contract, except as provided by subsection (d) of this section.

(1) A potential bidder must:

(A) submit to the department's Construction Division in Austin 10 days prior to the last day of bid opening a Confidential Questionnaire that includes information, as required by the department, concerning the bidder's equipment and experience as well as financial condition;

(B) have a certified public accountancy [accountant] firm that is licensed to practice public accountancy prepare the audited and any other financial information required by the department;

(C) satisfactorily comply with any technical qualification requirements determined by the department to be necessary for a specific project; and

(D) properly complete the Certification of Eligibility Status form contained in the Confidential Questionnaire for the purpose of bidding on federal-aid projects.

(2) Information adverse to the potential bidder contained in the Certification of Eligibility Status form will be reviewed by the department and the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids.

(3) Satisfactory audited financial information will grant a 12-month period of qualification from the balance sheet date of the financial statement.

(4) A four-month [~~three month~~] grace period of qualification, for the purpose of preparing and submitting current audited information, will be granted prior to the expiration date of the financial statement.

(5) The department may require current audited information at any time if circumstances develop which are factors that could alter the potential bidder's financial condition, ownership structure, affiliation status, or ability to operate as an on-going concern.

(d) Bidder's Questionnaire; Materials Supplier's Questionnaire. To be eligible to bid on a contract under this subsection or on a contract to be awarded under §9.19 of this subchapter (relating to Emergency Contract Procedures), a bidder must:

(1) submit to the department's headquarters office in Austin 10 days prior to the date the bid opens, a Bidder's Questionnaire that includes information, as required by the department, concerning a bid-

der's equipment and experience or for a materials contract, a bidder may submit a Materials Supplier's Questionnaire instead of a Bidder's Questionnaire;

(2) submit unaudited and other data as required in the instructions to the questionnaire submitted under paragraph (1) of this subsection;

(3) satisfactorily comply with any technical qualification requirements determined by the department to be necessary on a specific project; and

(4) for a federal-aid project, properly complete the Certification of Eligibility Status form contained in the questionnaire submitted under paragraph (1) of this subsection. Information adverse to the potential bidder contained in the certification will be reviewed by the department and by the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids on a federal-aid project.

(5) A four-month grace period of qualification will be added to a contractor that qualified under the Bidder's Questionnaire or Materials Supplier's Questionnaire and will be granted prior to the expiration date of the qualification.

(e) Bidding capacity; available bidding capacity. The department will make its examination and determination based on the information submitted under subsection (c) or (d) of this section, as appropriate, and advise the bidder of its bidding capacity.

(1) For a bidder submitting a Confidential Questionnaire and audited financial information, the amount of the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based on the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. If this calculation results in a positive amount that is not greater than \$2 million, the bidder will receive a bidding capacity of \$2 million if the bidder has positive net working capital and the bidder provides documentation of at least two years' experience and four completed projects in the field in which the bidder wishes to bid. Bidding capacity determined under this paragraph applies for any project and is not limited to waived projects.

(2) For a bidder submitting a Bidder's Questionnaire with no prior experience in construction or maintenance, or a negative working capital position (i.e., financial statements indicate that current liabilities exceed current assets), will receive a bidding capacity of \$1 million for waived projects only.

(3) For a bidder submitting a Bidder's Questionnaire and compiled financial information if the principals of the bidder have at least one year experience in construction or maintenance and have satisfactorily completed at least two projects in these fields, the bidding capacity is \$1.5 million for waived projects only.

(4) For a bidder submitting a Bidder's Questionnaire and compiled financial information and the principals of which have at least two years' experience in construction or maintenance and have satisfactorily completed at least four projects in these fields, the bidding capacity is \$2 million for waived projects only. Those bidders possessing more than two years' experience will be granted an additional \$500,000 in bidding capacity for each additional year of experience in construction or maintenance, with a maximum bidding capacity of \$6 million for waived projects only.

(5) For a bidder submitting a Bidder's Questionnaire and reviewed financial information and the principals of which have at least three years of experience in construction or maintenance and have satisfactorily completed at least six projects in these fields, the amount of

the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based upon the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. In the event that this calculation does not result in an amount greater than \$2 million, the bidder will receive a bidding capacity of \$2 million. Bidding capacity determined under this paragraph is limited to waived projects only.

(6) A bidder's available bidding capacity is determined by the department by subtracting from the bidder's bidding capacity the amount of the estimated cost of the bidder's uncompleted work on department contracts. Bidding capacity does not apply to a materials contract or building contract and an uncompleted materials or building contract does not affect the bidding capacity or available bidding capacity of a bidder.

(f) Effect of contract performance. A person's bidding capacity or eligibility to bid on a highway improvement contract may be affected by a decision of the deputy executive director under §9.24 of this chapter (relating to Performance Review Committee and Actions).

(g) Affiliated bidders; independence exception. Bidders that the department determines in accordance with §9.27 of this subchapter (relating to Affiliated Entities) are affiliated are not eligible to submit bids for the same project. A bidder that is determined to be affiliated but that can establish independence from the other affiliated bidders may request, in accordance with this subsection, an exception to its ineligibility. Such a request may be made only once during any 12-month period.

(1) To request the exception to the department's finding of affiliation, a bidder must submit to the executive director a written request explaining the basis for the exception accompanied by supporting evidence, including an affidavit affirming that the bidder is independent from and not coordinating with the affiliates or any other bidder. The written request must be received not later than the 30th day before the date of the bid opening for which the exception is requested.

(2) The department will review the request and supporting evidence provided to determine whether the requester is independent from the other affiliated bidder. In determining independence, the department will consider, in addition to other affiliation criteria:

- (A) transactions between the potential bidders; and
- (B) the extent to which the potential bidders share:
 - (i) equipment;
 - (ii) personnel;
 - (iii) office space; and
 - (iv) finances.

(3) If the department finds that the bidders are independent, the director of the division reviewing the request will recommend to the executive director that the requesting bidder be granted an exception.

(4) The executive director will review the request, supporting evidence, and department's recommendation and will make the final determination on the request. The executive director will send to the bidder the final written determination. An exception granted to the bidder remains in effect for future bid openings unless the exception is revoked under paragraph (5) of this subsection.

(5) The granting of an exception under this subsection does not remove the classification of the bidders as affiliated. The department reserves the right to conduct follow-up reviews and revoke the exception if the follow-up reviews indicate that the bidders are no longer independent. A bidder's failure to act independently of its affiliates or

other bidder during the period it was granted an exception under this subsection may result in the imposition of sanctions.

(6) If bidders classified as affiliates submit bids on the same project, the department reserves the right to reject all bids on that project and relet the contract.

(7) Affiliated bidders that are granted an exception under this subsection and that have been sanctioned in accordance with Chapter 10 of this title must meet the exception criteria in that chapter to be eligible to bid.

(h) Building contracts. To be eligible to bid on a building contract, a potential bidder must comply only with any requirements contained in the governing specifications applicable to the project.

§9.13. Notice of Letting and Issuance of Proposal Forms.

(a) Notice to Contractors. A person may apply to have his or her name placed on a list to receive the Notice to Contractors electronically.

(b) Application for notice. The following entities will receive the Notice to Contractors:

(1) qualified bidders approved under §9.12 of this subchapter (relating to Qualification of Bidders);

(2) disadvantaged business enterprises and historically underutilized businesses; and

(3) organizations performing work under supportive service contracts awarded by the commission.

(c) Notice of Bids. The department will advertise contracts on the Electronic State Business Daily maintained and operated by the Comptroller of Public Accounts.

(d) Proposal form.

(1) Proposal form content. A proposal form may include:

(A) the location and description of the proposed work;

(B) an approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed; and

(E) the special provisions and special specifications.

(2) Form of request. A request for a proposal form on any contract under this subchapter should be made using the department's electronic bidding system. On the written or emailed request of a contractor, the department may enter a form request into the system on behalf of the contractor if the requester is identified as the person authorized to sign for the contractor.

(e) Issuance of proposal form.

(1) This paragraph applies for contracts under this subchapter other than building contracts.

(A) Issuance. Except as provided in subparagraph (B) or (C) of this paragraph or paragraph (3) of this subsection, the department will, upon receipt of a request, issue a proposal form for a contract only to a bidder who qualifies under §9.12(c) or (d) of this subchapter, as appropriate, and for a highway improvement project, only if the estimated cost of the project is within that bidder's available bidding capacity, as determined under §9.12(e) of this subchapter.

(B) Non-issuance. Except as provided in subparagraph (D) of this paragraph, the department will not issue a proposal form requested by a bidder for a contract if at the time of the request the bidder:

- (i) is suspended or debarred by order of the commission or by the department;
- (ii) has not fulfilled the requirements for qualification under §9.12 of this subchapter;
- (iii) does not have the available bidding capacity;
- (iv) is ineligible to bid on any proposed contract under Item 7, Article 15, Responsibility for Damage Claims of the department's *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges*;
- (v) is prohibited from participating in the contract because of a decision of the Deputy Executive Director under §9.24 of this chapter (relating to Performance Review Committee and Actions); or
- (vi) has not attended a mandatory pre-bid conference.

(C) Non-issuance for rebid. The department will not issue a proposal form requested by a bidder for the rebid of a contract if:

- (i) at the time of the request the bidder is prohibited from rebidding the proposal due to a bid error on the original proposal form;
- (ii) the bidder failed to enter into a contract on the original award;
- (iii) at the time of the request the bidder is in default on the original contract or was terminated on the original contract unless the department terminated the contract in the best interest of the state; or
- (iv) the bidder or an affiliate of the bidder was originally determined to be the apparent low bidder on a project but failed to submit a DBE commitment as required by §9.227 of this chapter (relating to Information from Bidders) or failed to meet the requirements of §9.17(j) of this subchapter relating to participation in the Department of Homeland Security (DHS) E-Verify system.

(D) Exceptions. The department may issue a proposal form under a temporary approval to a bidder who would be ineligible under subparagraph (B)(ii) of this paragraph if the bidder has substantially complied with the requirements of §9.12 of this subchapter.

(2) This paragraph applies only for building contracts.

(A) Issuance. Except as provided in subparagraph (B) of this paragraph or paragraph (3) of this subsection, the department will issue, upon request, a proposal form to a bidder that is eligible under §9.12(h) of this subchapter.

(B) Non-issuance. The department will not issue a proposal form requested by a bidder for a building contract if, at the time of the request, the bidder:

- (i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits and the contract is a federal-aid project;
- (ii) is suspended or debarred by order of the commission or by the department; or

(iii) is prohibited from bidding that project because of default of the first awarded contract.

(3) All contracts. The department will not issue a proposal form for a contract under this subchapter to a bidder if the bidder or a subsidiary or affiliate of the bidder has received compensation from the department to participate in the preparation of the plans or specifications on which the bid or contract is based.

§9.14. *Submittal of Bid.*

(a) Acceptable methods. Bids for a contract under this subchapter may be submitted either manually or electronically.

(b) Manually submitted bids. For the purpose of manually submitting a bid, an acceptable proposal form is the form that is printed and given to the bidder by the department or a form printed by the bidder from the electronic bidding system [EBS].

(1) Delivery of Bid. The bidder shall place each completed proposal form in a sealed envelope marked to show its contents. When submitted by mail, this envelope shall be placed in another envelope which shall be sealed and addressed as indicated in the notice. Bids must be received on or before the hour and date set for the receipt and opening of bids and must be in the hands of the department letting official by that time.

(2) Bid content. The bidder shall submit the bid in compliance with the following requirements.

(A) Except as provided in subparagraph (B) of this paragraph and paragraph (3) of this subsection, the blank spaces for each item as required in the proposal form shall be filled in by writing in words in ink.

(B) The bidder shall submit a unit price for each item for which a bid is requested (including a zero if appropriate), except in the case of a regular bid item that has an alternate bid item. In such case, prices must be submitted for the base bid or with the set of items of one or more of the alternates.

(C) The bid shall be executed with ink in the complete and correct name of the bidder making the bid and be signed by the person or persons authorized to bind the bidder.

(D) Except in the case of a regular bid item that has an alternate bid item, unit prices shall be stated in dollars and/or cents for each bid item listed in the proposal form.

(3) Computer printouts.

(A) For manually submitted bids, a bidder may, in lieu of writing in words in ink on the bid item sheet, submit an original computer printout sheet bearing the authorized signature for the bidder. The unit prices shown on acceptable printouts will be the official unit prices used to tabulate the official total bid amount and used in the contract if awarded by the commission.

(B) Computer printouts are not acceptable on building contracts.

(c) Electronically submitted bids. In lieu of submitting a printed proposal form, the bidder may submit the bid electronically using the electronic bidding system [EBS] in accordance with this subsection.

(1) Bids must be received by the electronic vault on or before the time and date set for the receipt and opening of bids.

(2) For the submission or withdrawal of electronic bids, the bidder is responsible for obtaining its use of a computer system and access to the Internet.

(3) The department is not responsible for a bidder being unable to submit or withdraw a bid due to the unavailability of the Internet.

(4) The bid shall be in the correct name of the bidder making the bid.

(d) Bid guaranty. Except as provided in paragraph (4) of this subsection, a bidder must submit a bid guaranty with the bid for a contract that, on the date of the release of its advertisement, has an engineer's estimate of more than \$25,000. The amount of the guaranty is equal to two percent of the estimate, rounded to the nearest \$1,000, not to exceed \$100,000.

(1) Except as provided in paragraph (2) or (4) of this subsection, the bid guaranty must be made payable to the order of the commission or department and in the form of a cashier's check, money order, or teller's check drawn by or on a state or national bank, savings and loan association, or a state or federally chartered credit union (collectively referred to as a "bank"). The check must be payable at or through the institution issuing the instrument, or must be drawn by a bank on a bank, or by a bank and payable at or through a bank. The form of the instrument must be identified on the instrument's face.

(2) A bidder may submit a bid bond, in lieu of providing the guaranty required in paragraph (1) of this subsection. The bid bond shall be on the form specified by the department. A bid bond will only be accepted from a surety company authorized to execute a bond under and in accordance with state law. The bond must be dated on or before the date of the bid opening, bear the impressed seal of the surety company and the name of the bidder, and be signed by the bidder or bidders, in the case of a joint venture, and an authorized representative of the surety company. As an alternative for joint venture bidders, each of the bidders may submit a separate bid bond, completed as outlined in this paragraph. Powers of attorney must be attached to the bid bond. The bid bond amount required by the department must be within the surety company's authorized bonding limit.

(3) The department will not accept as a bid guaranty:

- (A) personal checks or certified checks;
- (B) other types of money orders; or
- (C) checks or money orders more than 90 days old.

(4) For bids submitted electronically under subsection (c) of this section, the bid guaranty must be an electronic bid bond [~~must be~~] made in the name or department issued vendor number of the bidder or if more than one, each bidder. An electronic bid bond will be accepted only from a surety company authorized to execute a bond under and in accordance with state law. The bond must be dated on or before the date of bid opening and bear the seal of the surety company. For joint venture bidders, the bond must be made in the names or department issued vendor numbers of all joint venture bidder participants. The bond authorization code must be entered into the authorization code field contained in the electronic bidding system [EBS]. Only bond authorization codes from the companies listed in the most recent version of the electronic bidding system [EBS] are acceptable. Printed checks or bid bond forms are not acceptable as guaranties for electronic bids.

§9.15. *Acceptance of Bids.*

(a) Public opening. Bids will be opened in accordance with Transportation Code, §223.004 and §223.005.

(1) Bids for contracts other than building contracts, with an estimate of less than \$1 million, may be filed with the district engineer at the headquarters for the district and opened and read at a public

meeting conducted by the district engineer, or his or her designee, on behalf of the commission.

(2) Bids for a building contract with an estimate of less than \$1 million may be filed with the director of the Support Services Division at the headquarters of the division and opened and read at a public meeting conducted by the director of that division, or the director's designee, on behalf of the commission.

(b) Bids not considered.

(1) The department will not consider a bid if:

- (A) the bid is submitted by an unqualified bidder;
- (B) the bid is in a form other than the official bid form issued to the bidder;
- (C) the certification and affirmation are not signed or the department identifies a discrepancy related to a certification in a subsequent review prior to award;
- (D) the bid was not in the hands of the letting official at the time and location specified in the advertisement;
- (E) the bidder modifies the bid in a manner that alters the conditions or requirements for work as stated in the proposal form;
- (F) the bid guaranty, when required, does not comply with §9.14(d) of this subchapter relating to the Submittal of Bid;
- (G) the proposal form was signed by a person who was not authorized to bind the bidder or bidders;
- (H) the bid does not include a fully completed HUB plan in accordance with §9.356 of this chapter when required;
- (I) a typed proposal form does not contain the information in the format shown on the "Example of Bid Prices Submitted by a Computer Printout's in the proposal form;
- (J) the bidder was not authorized to be issued a bid form under §9.13(e) of this subchapter relating to Notice of Letting and Issuance of Proposal Forms;
- (K) the bid did not otherwise conform with the requirements of §9.14 of this subchapter;
- (L) the bidder fails to properly acknowledge receipt of all addenda;
- (M) the bid submitted has the incorrect number of bid items;
- (N) the bidder does not meet the applicable technical qualification requirements;
- (O) the bidder fails to submit a DBE commitment within the period described by §9.17(i) of this subchapter relating to Award of Contract;
- (P) the bidder fails to meet the requirements of §9.17(j) of this subchapter relating to participation in the Department of Homeland Security (DHS) E-Verify system;
- (Q) the bidder bids more than the maximum or less than the minimum number of allowable working days shown on the plans when working days is a bid item.

(2) If bids are submitted on the same project separately by a joint venture and one or more members of that joint venture, the department will not accept any of the bids submitted by the joint venture and those members for that project.

(3) If bids are submitted on the same project by affiliated bidders as determined under §9.27 of this subchapter (relating to Affiliated Entities) and the executive director has not granted an affiliation exception under §9.12(g) of this subchapter relating to the Qualification of Bidders, the department will not accept any of the bids submitted by the affiliated bidders for that project.

(c) Revision of bid.

(1) For a manually submitted bid, a bidder may change a bid price before it is submitted to the department by changing the price in the printed bid form and initialing the revision in ink;

(2) For a manually submitted bid, a bidder may change a bid price after it is submitted to the department by requesting return of the bid in writing prior to the expiration of the time for receipt of bids, as stated in the advertisement. The request must be made by a person authorized to bind the bidder. The department will not accept a request by telephone but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

(3) For an electronically submitted bid, a bidder may change a unit bid price in the electronic bidding system [EBS] and resubmit electronically to the electronic vault until the time specified for the close of the receipt of bids. Each bid submitted will be retained in the electronic vault. The electronic bid with the latest date and time stamp by the vault will be used for bid tabulation purposes.

(d) Withdrawal of bid.

(1) A bidder may withdraw a manually submitted bid by submitting a request in writing to the letting official before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder. The department will not accept telephone requests but will accept a properly signed facsimile request. Except as provided in §9.16(c) of this subchapter relating to Tabulation of Bids and §9.17(d) of this subchapter, a bidder may not withdraw a bid subsequent to the time for the receipt of bids.

(2) A bidder may withdraw an electronically submitted bid by submitting an electronic or written request to withdraw the bid. An electronic withdrawal request must be submitted using the electronic bidding system [EBS]. The request, whether electronic or written, must be submitted by a person who is authorized by the bidder to submit the request and received by the department before the time and date of the bid opening.

(e) Unbalanced bids. The department will examine the unit bid prices of the apparent low bid for reasonable conformance with the department's estimated prices. The department will evaluate an apparent low bid with extreme variations from the department's estimate or where obvious unbalancing of unit prices has occurred. For the purposes of the evaluation the department will presume the same retainage percentage for all bidders. The department may consider an apparent low bid nonresponsive if the evaluation of the unit bid prices reveals that the apparent low bid is mathematically and materially unbalanced.

§9.17. Award of Contract.

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this subchapter (relating to Acceptance of Bids and Tabulation of Bids, respectively). It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid;

(3) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces; or

(4) the lowest bid is determined to contain a bid error that meets the notification requirements contained in §9.16(e)(1) of this subchapter and satisfies the criteria contained in §9.16(e)(2) of this subchapter.

(b) Except as provided in subsection (c), (d), (e), or (f) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which:

(A) the nonresident's principal place of business is located; or

(B) the nonresident is a resident manufacturer; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

(d) For a maintenance contract for a building or a segment of the state highway system involving a bid amount of less than \$300,000, if the lowest bidder withdraws its bid after bid opening, the executive director may recommend to the commission that the contract be awarded to the second lowest bidder.

(1) For purposes of this subsection, the term "withdrawal" includes written withdrawal of a bid after bid opening, failure to provide the required insurance or bonds, or failure to execute the contract.

(2) The executive director may recommend award of the contract to the second lowest bidder if he or she, in writing, determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder; and

(A) the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices;

(B) there is a specific need to expedite completion of the project to protect the health or safety of the traveling public; or

(C) delaying award of the contract would jeopardize the structural integrity of the highway system.

(3) The commission may accept the withdrawal of the lowest bid after bid opening if it concurs with the executive director's determinations.

(4) If the commission awards a contract to the second lowest bidder and the department successfully enters into a contract with the second lowest bidder, the department will return the lowest bidder's bid guaranty upon execution of that contract.

(e) If the lowest bidder is not a preferred bidder and the contract will not use federal funds, the department, in accordance with Transportation Code, Chapter 223, Subchapter B, will award the contract to the lowest-bidding preferred bidder if that bidder's bid does not exceed the amount equal to 105 percent of the lowest bid. For purposes

of this subsection, "preferred bidder" means a bidder whose principal place of business is in this state or a state that borders this state and that does not give a preference similar to Transportation Code, §223.050.

(f) When additional information is required to make a final decision, the commission may defer the award or rejection of the contract until the next regularly scheduled commission meeting.

(g) Contracts with an engineer's estimate of less than \$1 million may be awarded or rejected by the executive director under the same conditions and limitations as provided in subsections (a) - (c) of this section.

(h) The commission may rescind the award of any contract prior to contract execution upon a determination that it is in the best interest of the state. The executive director may rescind the award of a contract awarded under subsection (g) of this section prior to contract execution upon a determination that it is in the best interest of the state. If a contract is rescinded under this subsection, the bid guaranty will be returned to the bidder, but no compensation will be paid to the bidder as a result of the rescission.

(i) For a contract with a DBE goal, all bidders must submit the DBE information required by §9.227 of this chapter (relating to Information from Bidders) within five calendar days after the date that the bids are opened.

(j) Prior to contract award, all low bidders must be participating or provide documentation of participation in the Department of Homeland Security's (DHS) E-Verify system within five calendar days after the date that the bids are opened.

(k) Upon the award or rejection of a contract by the commission, the department will provide the low bidder written notification of the award or rejection. When applicable, the department will delay notification of the award of a contract pending resolution of:

- (1) an access agreement between the department and a railroad,
- (2) an agreement between the department and a third party participating with funding or concurrence, or
- (3) other conditions that are not in the best interest of the state.

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

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Texas Department of Transportation

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For further information, please call: (512) 463-8630



CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

SUBCHAPTER B. HIGHWAY CROSSINGS BY OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

43 TAC §28.11, §28.12

The Texas Department of Transportation (department) proposes amendments to §28.11, Surety Bond, and §28.12, Preparation of Contract.

EXPLANATION OF PROPOSED AMENDMENTS

During the 89th Legislative Session, the legislature passed Senate Bill 995, which removed the requirement that the surety bond for a contract authorizing an oversize or overweight vehicle to cross a road or highway be approved by the Comptroller of Public Accounts and the Attorney General's Office.

Amendments to §28.11, Surety Bond, remove the requirement that the state treasurer and the attorney general approve the surety bond and provide that the bonds must be approved by the department to align the rule with the statute. Additional changes are made to clarify the requirements of the section; those changes do not change the substance of the section.

Amendments to §28.12, Preparation of Contract, modify subsection (e) by removing the requirement that the surety bond be approved by the attorney general and the comptroller of public accounts to align the rule with the statute and eliminating language that is redundant of that in §28.11.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. James Stevenson, P.E., has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. James Stevenson has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will result in an expeditious approval of Highway Crossing Agreements. This benefits legislative requests as well, several existing highway crossing agreements were a result of passed legislation.

COSTS ON REGULATED PERSONS

Mr. James Stevenson has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. James Stevenson has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. James Stevenson has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF INFORMATION AND COMMENTS

Any person that is required to comply with the proposed rule or any other interested person may provide information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis, or may submit written comments on the amendments to §28.11 and §28.12(e). The information or comments must be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "*Surety Bonds for Overweight/Oversize Vehicles*." The deadline for receipt of the information or comments is 5:00 p.m. on March 16, 2026. In accordance with Transportation Code, §201.811(a)(5), a person who makes a submission must disclose, in writing with the submission, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.051, which requires the commission to adopt rules relating to the forms and procedures to be used for contracts for crossing roads.

The authority for the proposed amendments is provided by S.B. No. 995, 89th Regular Session, 2025. The primary author and the primary sponsor of that bill are Sen. Robert Nichols and Rep. Dennis Paul, respectively.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 623, Subchapter C.

§28.11. *Surety Bond*.

Before the requester may exercise any right under a contract under this subchapter, the [The] requester shall[; prior to exercising any rights thereunder,] execute with a corporate surety authorized to do business in this state an adequate surety bond in the [such] amount [as may be] determined by the commission to compensate for the cost of maintenance and repairs as provided in §28.12 of this subchapter (relating to Preparation of Contract). The bond must be [herein,] approved by the department and [state treasurer and the attorney general, with a corporate surety authorized to do business in this state,] conditioned on the requester fulfilling the obligations of the contract.

§28.12. *Preparation of Contract.*

(a) The department will contract with the requester to indemnify the state for the cost of maintenance or repair to that portion of the highway crossed by vehicles which cannot comply with one or more restrictions of Transportation Code, Chapter 621.

(b) The department will, at the expense of the requester, periodically maintain and repair the vehicle crossing in accordance with established departmental regulations, specifications, and engineering standards and practices.

(c) If the proposed vehicle crossing requires initial upgrading or reconstruction to safely and adequately accommodate the vehicles which will be using the highway crossing, the requester will bear the entire cost of such work. Construction plans, specifications, traffic control plans, and any other related work will be provided by the requester at no cost to the state. At the sole option of the department, it may elect to do this work or provide for this work by separate contract, with the requester bearing the entire cost.

(d) The requester will be responsible for furnishing, installing, maintaining, and removing when no longer required all traffic control devices which are required at the crossing to insure the safety of the traveling public. At the sole option of the department, it may elect to do this work or provide for this work by separate contract, with the requester bearing the entire cost. All traffic-control devices and flaggers, if required, shall be in accordance with the Texas Manual on Uniform Traffic Control Devices.

(e) The requester shall indemnify the department for the cost of maintenance and repair to the vehicle crossing. The requester shall, at the entire expense of the requester, provide and keep in force a surety bond that satisfies the requirements of §28.11 of this subchapter (relating to Surety Bond) [in an amount determined by the state to cover the cost of such maintenance and repair]. [The bond will require approval by the attorney general and comptroller of public accounts.]

(f) The requester shall keep the roadway free of debris and objectionable dust, lights, or noise.

(g) The requester shall provide the department with the department's certificate of insurance covering the latest insurance requirements for contractors doing state highway construction work.

(h) The responsibilities of the requester as set forth in the contract shall not be transferred, assigned, or conveyed to a third party without approval of the department.

(i) If, in the sole judgment of the department, it is determined at a future date that traffic conditions have so changed that the existence or use of the vehicle crossing is impeding maintenance, damaging the highway facility, impairing safety, or that the vehicle crossing is not being properly operated, or that it constitutes a nuisance, or if for any other reason it is in the department's judgment that such a facility is not in the public interest, the vehicle crossing shall be modified if corrective measures acceptable to both the department and the requester can be applied to eliminate the objectionable features of the facility or terminated and the use of the area as a vehicle crossing discontinued.

(j) Upon termination of the contract the department shall make an inspection of the crossing site. If additional repairs, modifications, or rehabilitation is required to return the highway to its original condition, the requester shall bear the entire expense of such work.

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

Filed with the Office of the Secretary of State on January 29, 2026.

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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: March 15, 2026

For further information, please call: (512) 463-8630

