

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 6. RURAL HEALTH CLINICS

1 TAC §355.8101

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8101 concerning Rural Health Clinics Reimbursement. The amendment to §355.8101 is adopted without changes to the proposed text as published in the January 14, 2022, issue of the *Texas Register* (47 TexReg 78). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §355.8101 is adopted to comply with House Bill 4 (H.B. 4), 87th Legislature, Regular Session 2021, and to make other amendments to enhance clarity, consistency, and specificity. HHSC is required by H.B. 4 to ensure a Rural Health Clinic (RHC) is reimbursed for a covered telemedicine or telehealth medical service delivered by a health care provider to a Medicaid recipient at a RHC facility.

The adopted rule includes reformatted text for clarity and transparency in subsection (h) and subsection (l) with form updates in subsection (j). Additional clarifying updates are made to ensure consistency throughout the rule and that the rule appropriately describes current practices.

COMMENTS

The 21-day comment period ended February 4, 2022.

During this period, HHSC received comments regarding the amendment from two commenters from two entities: DeWitt Medical District and the Texas Association of Rural Health Clinics. A summary of comments relating to the rule and HHSC's responses follow.

Comment: All commenters expressed support for the proposed rule amendment.

Response: HHSC appreciates the commenters' support of the rule amendment. No changes were necessary in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of

HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on March 23, 2022.

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Karen Ray

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For further information, please call: (512) 707-6065



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 39. PORT OF ENTRY

16 TAC §§39.1 - 39.5

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended §39.1 and new §§39.2 - 39.5, related to Ports of Entry, without changes to the proposed text as published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 622). The rules will not be republished.

The commission adopts these rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. As amended, §39.1 brings the rule in line with modern agency protocols for providing receipts for taxes and fees collected at ports of entry. The adopted new §§39.2 - 39.5 reflect current statutory requirements and agency practices, providing increased transparency.

No public comments were received.

The rules are adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.276

The Comptroller of Public Accounts adopts new §3.276, concerning surveying services, with changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6377). The rule will be republished. This section memorializes existing comptroller policy, implements House Bill 3319, 80th Legislature, 2007, and defines terms in Tax Code, §151.0048 (Real Property Service) which were not previously defined. The comptroller intends for the information in this rule to be consistent with the surveying services information currently in §3.356 (relating to Real Property Service). Portions of §3.356 regarding surveying services will be repealed after the adoption of this new rule. To the extent the information in this section differs from the information concerning surveying services contained in other sections of this title, it is the comptroller's intent that this section control.

Subsection (a) defines terms used in this section. Paragraph (1) defines the term "confirm" based on guidance provided in Comptroller's Decision No. 101,058 (2011) and the requirements for boundary construction stated in Administrative Code, Title 22, Part 29, Chapter 663, Subchapter B, §663.16 (relating to Boundary Construction).

Paragraph (2) defines the term "contractor" as stated in Tax Code, §151.0048(c).

The comptroller received comments from Henry A. Kuehlem, Registered Professional Land Surveyor (RPLS), BaseLine Surveyors on the definition of "contractor." Mr. Kuehlem stated that "owner" should be added to the definition of "contractor" in subsection (a)(2) because survey work is ordered and paid for by the owner, especially in new home construction.

The comptroller declines to make the suggested change. Tax Code, §151.0048(c) provides the list of persons who may be regarded as a contractor. The comptroller recognizes there may be situations where a homeowner may act as a general contractor when building his or her own home. However, the statute's definition captures this possibility allowing for a "person acting

as a builder to improve residential real property" to qualify for the exclusion.

Paragraph (3) defines the term "determine" based on guidance provided in Comptroller's Decision No. 101,058 (2011) and the requirements for boundary construction stated in Administrative Code, Title 22, Part 29, Chapter 663, Subchapter B, §663.16 (relating to Boundary Construction).

Paragraph (4) defines the term "landman." The definition is taken from Occupations Code, §1702.324(a) (Certain Occupations).

The comptroller received comments on this definition from Russell B. Cohen, Director of Government Affairs, American Association of Professional Landmen. Mr. Cohen proposed a revised definition of "landman" recently approved by the association's membership. Mr. Cohen suggested the comptroller use this definition of a landman instead of the definition in subsection (a)(4) of the proposed rule. The comptroller declines to adopt the suggested definition. For ease and consistency of administration, the comptroller adopts the definition of landman in Occupations Code, §1702.324(a). This section of the Occupations Code aligns more closely with the qualifications for exclusion described in Tax Code §151.0048(b-1).

Paragraph (5) defines the term "surveying service" based on the definition of "surveying of real property" in §3.356(a)(9) of this title (relating to Real Property Service).

Subsection (b) restates agency policy that a person who performs a surveying service defined in subsection (a)(5) performs a taxable surveying service and lists some examples. The examples are for illustration purposes only and are not exhaustive.

Subsection (c) lists examples of surveying activities that are not taxable as real property services. Prior comptroller rulings have held that the surveying and marking of proposed improvements and natural features are not taxable as real property services. See e.g., Comptroller Decision No. 101,058 (2011); STAR Accession Nos. 9207L1186C04 (July 30, 1992); 9004L0996E11 (April 4, 1990); and 8901T0920C10 (Jan. 23, 1989). Although these activities could be considered "surveying" within the meaning of the statute, subsection (c) memorializes the prior comptroller rulings.

The comptroller received comments from Henry Mayo, RPLS, Regional Vice President, BaseLine Surveyors. Mr. Mayo suggested the addition of a definition for the term "record data" in subsection (a). His proposed definition for the term would be "existing boundary or easement information obtained from recorded public documents." Mr. Mayo also suggested including that the provision of record data included in a topographic survey or other nontaxable survey without applying a professional determination of the individual line locations as an example of a nontaxable service in subsection (c). Finally, Mr. Mayo suggested a requirement that a disclaimer be included on nontaxable surveys when only record data was used to prepare the survey.

The comptroller declines to make the suggested changes. The proposed definition of "record data" does not provide additional, substantive guidance, and Mr. Mayo's suggested term would only be used within his suggested addition to subsection (c). The suggested addition to subsection (c) describes activities performed within the services currently listed and does not provide an additional example of a specific service. An additional disclaimer is also not required. Taxpayers are required to maintain records to document their taxable and nontaxable sales by §3.281 (Records Required; Information Required).

Curtis Strong, RPLS, Strong Surveying, LLC., asked whether preparing an elevation certificate for flood insurance purposes under subsection (c)(12) is taxable. The comptroller declines to make any changes based on this comment. Subsection (c)(12) clearly provides that a survey to certify building elevations issued for completion of the National Flood Insurance Program Elevation Certificate is nontaxable. However, if the certificate issued is used to evaluate risks to property, determine an individual's eligibility for insurance coverage, determine the proper insurance premium rate, or determine the payment of insurance policy benefits, the survey is taxable as an insurance service.

Both proposed subsections (b) and (c) include staking and placement services in the list of examples as taxable and nontaxable services. The comptroller received comments on staking and placement services in subsections (b)(8) and (c)(14) from Brad Litteken, RPLS; Dean Woodley, RPLS, Live Oak Surveying; Mr. Kuehlem, RPLS; and Mr. Mayo, RPLS.

Mr. Litteken noted subsections (b)(8) and (c)(14) have the same title, "Staking and Placement Services." He said the duplicate titles would make it difficult to code his accounting software to distinguish the taxable and nontaxable services listed in those subsections. Mr. Woodley echoed Mr. Litteken's statement that the inclusion of staking services in both sections will create confusion.

Mr. Woodley also stated that licensed professional surveyors would be at a disadvantage because unlicensed persons also perform staking and placement services and do not consider themselves to be performing a taxable service. Mr. Kuehlem also questioned whether the services described in the rule are taxable when performed by an unlicensed person.

Mr. Mayo suggested that the cleanest way to define the line between taxable and nontaxable location and staking surveying services is whether the determination of property and/or easement lines is made by a surveyor and certified by a seal and/or statement of certification.

Based on the comments, the comptroller renames subsection (c)(14) as location services. Those services are described as staking, painting, or otherwise marking the approximate future or existing surface positions of tangible personal property or improvements to realty when the service provider takes no actions listed in (a)(5) to determine or confirm the precise property or easement boundaries or the exact location of the item in relation to the boundaries. The comptroller declines to make any other changes based on these comments at this time.

Subsection (d) implements Tax Code, §151.0048(b) and (b-1), which exclude surveying services from taxable real property services when purchased by a contractor building a new residential improvement or when performed by a landman.

Doug Duffie, CPA requested latitude regarding the beginning and ending dates for the new residential construction exclusion provided in subsection (d)(1). Subsequently, Mr. Duffie wrote again stating, "it appears latitude has been granted for the new residential construction exclusion period for surveying services." The comptroller declines to make any changes based on these comments.

Subsection (e) explains the sales tax permitting and reporting responsibilities of a person who performs a surveying service.

Mr. Litteken commented, relating to subsection (d)(2) and (e)(3), that authorizing landmen to perform surveying services is in

direct conflict with Occupations Code. He suggested to remove the word "surveying" from subsection (d)(2) and (e)(3) and all other related sections of the rule. The comptroller declines to make changes based on these comments. Subsections (d)(2) and (e)(3) are consistent with Tax Code, §§151.0048(b) and (b-1).

Subsection (f) restates agency policy regarding when a taxpayer may issue a resale or exemption certificate in lieu of paying tax on a taxable surveying service or for tangible personal property used in performing a taxable surveying service. This information is currently found in §3.356(c) and (d) of this title and §3.287 of this title (relating to Exemption Certificates).

Mr. Litteken also asked if local governmental entities should be specifically excluded and codified in this rule as exempt from sales tax. Additionally, Mr. Strong, requested a clarification that boundary work performed directly for a governmental entity is not taxable. Tax Code, §151.309 exempts all purchases of taxable items made by any political subdivision of this state, including all city, county, and special purpose districts. Additionally, subsection (f) details a surveyor's responsibilities when working for an entity that is providing services to an exempt entity. The comptroller declines to make any changes to the rule.

Subsection (g) restates agency policy regarding the taxability of an unrelated service. This information is found in §3.356(i) of this title.

Subsection (h) refers to §3.334 of this title for guidance relating to local sales and use taxes.

This section is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The adoption implements Tax Code, §151.0101 (Taxable Services) and §151.0048 (Real Property Services).

§3.276. *Surveying Services.*

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

(1) Confirm--To perform any act, at a location or remotely, to reestablish or verify boundaries of real property or the location of a real property improvement. The term includes reestablishing or verifying the location of a boundary used as a reference point to locate or measure to another point, such as the location of an improvement in relation to the boundaries of real property.

(2) Contractor--A person who makes an improvement on real property and who, as a necessary or incidental part of the service, incorporates tangible personal property into the real property improved. For the purposes of this section, the term includes a builder, developer, speculative builder, or other person acting as a builder to improve residential real property.

(3) Determine--To perform any act, at a location or remotely, to establish, mark, or set the boundaries of real property or the location of an improvement. The term includes ascertaining the location of a boundary used as a reference point to locate or to measure another point, such as the location of an improvement in relation to the boundaries of real property.

(4) Landman--An individual who, in the course and scope of the individual's business:

(A) acquires or manages petroleum or mineral interests; or

(B) performs title or contract functions related to the exploration, exploitation, or disposition of petroleum or mineral interests.

(5) Surveying service--An activity performed on land, from the air, under water or remotely that uses relevant elements of law, research, measurement, analysis, computation, mapping, and land description to determine or confirm the boundaries of real property or to determine or confirm the location of an improvement in relation to the boundaries of real property. Professional surveying subject to regulation under Occupations Code, Chapter 1071 (Land Surveyors), is presumed to be a surveying service.

(b) Taxable surveying services. Except as provided in subsection (d) of this section, surveying activities described in subsection (a)(5) of this section that are performed for real property located in Texas are taxable as real property services, including the preparation of the following types of surveys:

(1) As-built survey. A survey to depict the relationship of improvements to property boundary lines.

(2) Boundary survey. A survey to determine or confirm a boundary line on real property, or to obtain data for constructing a map or description showing a boundary line.

(3) Easement survey. A survey to determine or confirm by map or description, the boundaries of a tract of real property used in granting the right, privilege, or liberty given to a person or group to use land belonging to another for a specific and definite purpose. An easement survey may document existing easements or be used to establish a new easement.

(4) Land title survey. A boundary survey to determine or confirm boundary locations for title transfer of real property.

(5) Right-of-way survey. A survey to determine or confirm right-of-way-lines, center lines, or reference lines, including surface, overhead and underground lines. Such surveys typically document the route of highways, railroads, pipelines, waterways or canals, and transmission lines for electrical or communication purposes.

(6) Subdivision plat. A survey to divide a tract of real property into parcels or lots, and may include the location of items such as street rights-of-ways or easements. The survey is often performed to meet subdivision statutes or county and municipal regulations. This survey may also be referred to as a lot survey.

(7) Title survey. A survey to investigate and evaluate factors affecting and influencing boundary locations, ownership lines, rights-of-way, and easements within or immediately surrounding a tract of real property. A title survey is commonly performed to locate, determine, or reestablish property boundaries for title insurance purposes.

(8) Staking and placement services. A survey that establishes, remotely or on the ground, the location and position of various structures or construction projects in relation to the boundaries of the involved site. The survey is used for defining the positions of buildings, structures, wells, canals, fences, walls, and other physical facilities in relation to the boundaries or property lines of the site.

(c) Nontaxable surveying services. Surveying activities not described in subsection (a)(5) of this section are not taxable as real property services. Examples of nontaxable surveying services include:

(1) As-built verification survey. A survey after construction is completed to determine characteristics of an improvement other than its relationship to property boundary lines, such as principal hor-

izontal and vertical control points, and the dimensions of the finished structures and/or infrastructures.

(2) Construction survey. Activities prior to and during a construction project to measure aspects of an improvement other than its relationship to property boundary lines, such as activities to control elevation, horizontal location, dimensions, or configuration; to determine if the construction was adequately completed; and to obtain dimensions for calculating quantities used in construction.

(3) Design survey. A survey to obtain information that is essential for planning an engineering project or development and estimating its cost.

(4) Existing oil, gas, or oil and gas well ties survey. A survey to gather the locations of existing oil or gas wells in relation to the location of proposed wells.

(5) Geodetic/Control survey. A survey to provide horizontal and/or vertical coordinates of fixed points on the surface of the earth to which supplementary surveys or mapping efforts are adjusted.

(6) Hydrographic survey. A survey to determine the geometric and dynamic characteristics of bodies of water, including a record of a survey, of a given date, of a water covered region, with particular attention to the relief of the bottom and features under the surface.

(7) Monitoring deformation survey. A survey to periodically measure the horizontal and vertical movement or warpage of the surface of the earth or a physical object or structure.

(8) Oil or gas drilling unit, proration unit, and pooled unit plats. A drilling unit, proration unit, or pooled unit plat submitted to the Railroad Commission.

(9) Seismic survey. A survey to determine the subterranean composition and structure in an area, generally by using a vibroseis or small explosives to measure vibrations.

(10) Topographic survey. A survey to determine the configuration, relief, or elevations of a portion of the earth's surface, including the location of natural features.

(11) Tree survey. A survey to locate and identify existing trees on real property. If services are performed to evaluate the health of a tree, to remove a tree, or to prune a tree, those services are taxable landscaping services. See §3.356 of this title (relating to Real Property Service).

(12) Building elevation survey. A survey to certify building elevations that is issued for completion of the National Flood Insurance Program Elevation Certificate. If the survey or certificate issued is used to evaluate risks to property, is used to determine an individual's eligibility for insurance coverage, is used to determine the proper insurance premium rate, or for determining the payment of insurance policy benefits, the survey provided is taxable as an insurance service. See §3.355 of this title (relating to Insurance Services).

(13) Archaeological or historic significance survey. A survey to identify items of archaeological or historic significance performed after boundary surveying has been completed.

(14) Location services. Staking, painting, or otherwise marking the approximate future or existing surface positions of tangible personal property or improvements to realty when the service provider takes no actions listed in subsection (a)(5) of this section to determine or confirm the precise property or easement boundaries or the exact location of the item in relation to the boundaries. For example, marking the approximate location where a portable building is to be installed or staking or re-staking the approximate centerline

of a pipeline is not taxable when the person marking the approximate location does not determine or confirm the location of the structures in relation to the boundaries of real property.

(d) Excluded surveying services. A person performing a surveying service described in subsection (a)(5) of this section is not performing a taxable real property service if:

(1) a contractor purchases the surveying service as part of the construction of a new improvement to residential real property or other improvement immediately adjacent to a new improvement to residential real property; or

(2) a landman performs the surveying service and it is necessary to negotiate or secure land or mineral rights for acquisition or trade, including:

(A) determining ownership;

(B) negotiating a trade or agreement regarding land or mineral rights;

(C) drafting and administering contractual agreements;

(D) ensuring that all governmental regulations are complied with; and

(E) any other action necessary to complete the transaction related to a service described by this subsection, other than an information service described by Tax Code, §151.0038 (Information Service).

(e) Responsibilities of persons providing surveying services.

(1) A person who performs a surveying service described in subsection (a)(5) of this section for consideration must obtain a sales and use tax permit and collect and remit sales or use taxes on all charges for taxable surveying services.

(2) A person who performs a surveying service for a contractor who claims the service is excluded from tax as described in subsection (d)(1) of this section must obtain documentation from the contractor demonstrating the surveying service is being purchased as part of the construction of a new improvement to residential real property or other improvement immediately adjacent to a new improvement to residential real property. The contractor and the person who performs the surveying service must retain a copy of these records in accordance with §3.281 of this title (relating to Records Required; Information Required). If the comptroller later determines that the surveying service purchased by the contractor was taxable, the contractor will be liable for the tax due on the purchase including any related penalty and interest.

(3) A landman who performs a surveying service defined in subsection (a)(5) of this section that is excluded from tax because it meets the requirements in subsection (d)(2) of this section must retain documentation demonstrating the surveying service provided was not taxable. The landman and purchaser must retain these records in accordance with §3.281 of this title.

(4) If a purchaser or seller of a nontaxable surveying service described in subsection (d)(1) or (2) of this section does not maintain the documentation demonstrating that the service is nontaxable, the comptroller may proceed against either the seller or the purchaser, or both until the tax, penalty, and interest have been paid. See §3.282(m) of this title (relating to Auditing Taxpayer Records.)

(f) Resale and exemption certificates. The sale of a surveying service described in subsection (a)(5) of this section is presumed taxable.

(1) Resale certificates. A person who performs a taxable surveying service may issue a resale certificate to a supplier in lieu of paying tax on purchases of tangible personal property if care, custody, and control of the property transfers to the purchaser as part of the taxable surveying service. The care, custody, and control of tangible personal property is transferred to the purchaser of the service when the purchaser has primary possession of the tangible personal property. For example, a person who performs a taxable surveying service may issue a resale certificate to a supplier when purchasing metal pins or PK nails used to mark boundary lines. A person who performs a taxable surveying service may also issue a resale certificate in lieu of paying tax on purchases of taxable services the person intends to transfer to the purchaser as an integral part of the taxable surveying service. A person who performs taxable surveying services owes tax on tangible personal property, such as supplies, machinery and equipment, used or consumed in performing the service.

(A) A person who performs a taxable surveying service may not accept a resale certificate in lieu of collecting tax on a taxable surveying service sold to a purchaser who acquires the service for the purpose of providing a nontaxable service. For example, a person performing taxable surveying services may not accept a resale certificate from a title company on taxable surveying services used in performing nontaxable real estate closing services, even if the title company transfers the survey to the real estate purchaser after the closing. Similarly, a person performing taxable surveying services may not accept a resale certificate from an engineering firm on taxable surveying services acquired for the purpose of providing nontaxable engineering services to either an exempt or non-exempt customer. The engineer owes tax on the purchase of the taxable surveying service used in the provision of the nontaxable engineering service. The engineering firm and the title company are the end-consumers of the taxable surveying services purchased to provide their respective nontaxable services.

(B) A person who performs a nontaxable surveying service may not issue a resale certificate in lieu of paying tax on taxable items used or consumed in performing the nontaxable surveying service. A person who performs a nontaxable surveying service is the end-consumer of all taxable items purchased, leased, or rented to perform the nontaxable service. A person who performs a nontaxable surveying service owes tax on all taxable items purchased to perform the service, unless the items are otherwise exempt.

(2) Exemption certificates. A person who performs a taxable surveying service may accept a properly completed exemption certificate in lieu of collecting tax if an exempt entity directly contracts for and purchases the surveying service. See §3.322 of this title (relating to Exempt Organizations), §3.287 of this title (relating to Exemption Certificates). See also §3.288 of this title (relating to Direct Payment Procedures and Qualifications) regarding purchasers who may issue a direct payment exemption certificate. Purchase vouchers that are issued by governmental entities exempted under Tax Code, §151.309, are acceptable documentation of exempt transactions. See §3.322(g)(3) of this title.

(A) Except as provided by subparagraph (B) of this paragraph, a person who performs a taxable surveying service may not accept an exemption certificate from a person performing nontaxable services for an exempt entity described in Tax Code, §151.309 or §151.310. The person providing the nontaxable services is the end consumer and owes tax on the purchase of the taxable surveying service, even if the person providing the nontaxable services provides a copy of the survey to the exempt entity upon completion of its nontaxable services.

(B) A person who performs a taxable surveying service may accept an exemption certificate from a contractor under Tax Code,

§151.311, on a purchase of a taxable item for use under a contract to improve realty for an organization that is exempt under Tax Code, §151.309 or §151.310.

(g) Unrelated services.

(1) A service is an unrelated service if:

(A) it is not a taxable surveying service nor a service or labor taxable under another provision of Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax);

(B) it is not provided as a part of the taxable surveying service and is of a type that is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of services that are distinct and identifiable from taxable surveying services include nontaxable surveying services, such as a topographical survey, engineering services and architectural or landscaping design services.

(2) Unrelated nontaxable services and taxable surveying services sold or purchased for a single charge. When an unrelated nontaxable service and a taxable surveying service are sold together for a single charge, the total amount charged is presumed to be taxable. This presumption does not apply if the portion of the charge attributable to the taxable surveying service represents 5.0% or less of the total charge.

(A) The person performing the taxable surveying service with an unrelated nontaxable service may overcome the presumption of taxability by separately stating a reasonable charge for the taxable surveying service to the purchaser at the time of the transaction. A purchaser may presume, in the context of this section, that the service provider's separately stated charge for a taxable surveying service is reasonable. If the charge attributable to the taxable surveying service is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the portion of the total charge that is attributable to an unrelated service.

(B) The taxable surveying service provider's books must support the apportionment of the total charge between a taxable surveying service and an unrelated nontaxable service based on either the cost of providing the taxable surveying service or a comparison to the normal charge for each service if it had been performed on a stand-alone basis. If, after reviewing the transaction, the comptroller determines the charge for a taxable surveying service is unreasonable, considering the cost of providing the service or a comparable charge made in the industry for the service, the comptroller may adjust the charges and assess against the person performing the taxable surveying service any additional tax, penalty, and interest due on the taxable surveying service.

(h) Local taxes. See §3.334 of this title (relating to Local Sales and Use Taxes) for additional guidance related to local sales and use tax responsibilities.

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

CHAPTER 876. GENERAL PROVISIONS

40 TAC §876.9

The Texas Council for Developmental Disabilities (TCDD) adopts amendments to §876.9, concerning Charges to Access to Public Records. The rule was adopted without changes to the rule as proposed in the *Texas Register* (46 TexReg 6392) on September 24, 2021, and will not be republished.

The Council received no comments on the proposed rule.

The purpose of the amendments to §876.9 is to correctly identify the statute establishing charges for public records.

The amendments are authorized under the Texas Human Resources Code, §112.020, which provides authority for the Council to adopt rules as necessary to implement the Council's duties and responsibilities.

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

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CHAPTER 877. GRANT AWARDS

40 TAC §§877.1, 877.2, 877.4

The Texas Council for Developmental Disabilities (TCDD) adopts amendments to §877.1 concerning General Provisions, §877.2 concerning Application and Review Process, and to §877.4, concerning Appeal of Funding Decisions. The rules were adopted without changes to the rules as proposed in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6392). The rules will not be republished.

The purpose of the amendments to §877.1 and §877.2 is to apply consistent language to all sections regarding the Council Request for Applications process. The purpose of the amendment to §877.4 is the clarify the source material for the agency appeals process.

The amendments are authorized under the Texas Human Resources Code, §112.020, which provides authority for the Council to adopt rules as necessary to implement the Council's duties and responsibilities.

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

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