

# 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 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

##### 13 TAC §§13.3 - 13.6

The Texas Historical Commission (Commission) adopts amendments to 13 TAC §§13.3 - 13.6, concerning the State Franchise Tax Credit for Certified Rehabilitation of Certified Historic Structures. The rules are adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1150). The rules will not be republished.

The amendments collectively support the future implementation of an electronic application submission system for the applications required by the Commission as part of the tax credit program.

Sections 13.3 - 13.5 describe the information and submission requirements for each of the three parts of the tax credit application required by the Commission for review of proposed and completed projects. §§13.3(b)(4), 13.4(b)(3), and 13.5(b)(4) specifically require printed, hard copy photographs. The amendments remove these requirements and directs applicants to consult program guidance published by the Commission on its website for current submission requirements. Commission guidance materials will be revised to support an electronic submission system once one has been established. The Commission will prioritize open access through acceptance of standard format materials in the electronic submission system.

Section 13.3 outlines the requirements for the Part A - Evaluation of Significance application. Part A requires information and documentation to confirm that a subject property has an existing historic designation or is eligible for a historic designation that would qualify the property to participate in the tax credit program. §13.3(b)(4) requires photographic documentation of current building conditions be submitted in printed formats. The amendment requires photographic documentation to be submitted in conformity with the Commission's guidance materials as published on its website.

Section 13.4 outlines the requirements for the Part B - Evaluation of Significance application. Part B requires information and documentation to allow Commission staff to assess proposed architectural work. §13.4(b)(3) requires photographic documentation of proposed projects be submitted in printed formats. The amendment requires photographic documentation to be submitted in conformity with the Commission's guidance materials as published on its website.

Section 13.5 outlines the requirements for the Part C - Request for Certification of Completed Work application. Part C requires documentation to allow Commission staff to assess and certify completed architectural projects. §13.5(b)(4) requires photographic documentation of completed projects be submitted in printed formats. The amendment requires photographic documentation to be submitted in conformity with the Commission's guidance materials as published on its website.

Section 13.6 describes the process by which Commission staff review submitted applications. §13.6(b) requires submission of applications in a hard copy format and disallows submission via electronic mail. The amendment removes these specific constraints from the Administrative Code and instead directs applicants to follow published program guidance on the Commission's website.

No comments pertaining to these rule revisions were received during the thirty-day period following publication on February 19, 2021, in the *Texas Register*.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Texas Historic Preservation Tax Credit Program and under Texas Government Code §171.909 which authorizes the Commission to adopt rules necessary to implement the Tax Credit for Certified Rehabilitation of Certified Historic Structures under the Texas Franchise Tax. The Commission interprets this authority as allowing for the revision of application procedures and formats.

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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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-6218



#### CHAPTER 21. HISTORY PROGRAMS SUBCHAPTER A. INTRODUCTION

##### 13 TAC §21.3

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter A, §21.3, related to historical marker and monument definitions. The amendments are adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1156). The rule will not be republished.

The amendments to §21.3 provide additional new and revised definitions of terms in Chapter 21. These revised definitions identify and define the categories of Commission historical designations so the public may understand how Commission rules apply to the defined terms.

No comments were received regarding the proposed amendments.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

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

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## SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

### 13 TAC §21.7

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter B, §21.7, related to historical marker applications. The amendments are adopted without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1157). The rule will not be republished. No comments were received regarding the proposed amendments.

The amendments to §21.7 clarify the type of Official Texas Historical Marker that may be awarded to a Historic Texas Cemetery by stating that medallions and plaques may also be awarded as part of the marker approval process.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

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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### 13 TAC §21.12

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter B, §21.12, related to marker text requests. The amendments are adopted without changes to the proposed text, as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1159). The rule will not be republished.

The amendments to §21.12 clarify the rules by using more appropriate terminology and moves decision-making regarding marker text requests from staff to Texas Historical Commission commissioners. In making these changes, the amendments serve a broader purpose of ensuring the accuracy of marker text.

The Commission received two comments regarding existing language in §21.12 from two commenters. However, neither comment referred to the new proposed language as published on February 19, 2021 so it is unclear whether the commenters favor or oppose adoption of the amendments. Both comments related to the role of the State Historian, and both incorrectly identified a historian at the Texas State Historical Association as being in that position. Both comments suggested that a panel of three historians is not adequate to review marker challenges. THC believes that a panel of that size continues to be adequate.

One commenter suggested that not all three historians should be from the same university. THC believes that the requirements for appointment to that committee will make it extremely unlikely that all three would be from the same institution. Finally, another commenter suggested that all meetings of that panel be posted for public attendance. The recommendations of the panel will go to THC staff, not to the commission itself, and they are not acting in the role of an advisory committee under state law, so will not be publicly posted. However, appeals from staff decisions will go to the History Programs Committee, and all meetings of that committee are posted meetings open to public attendance. No changes were made based on these comments.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

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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### 13 TAC §21.13

The Texas Historical Commission (Commission) adopts new rule, §21.13 of the Texas Administrative Code, Title 13, Part 2, Chapter 21, Subchapter B, related to removal of historical markers and monuments, without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1160). The rule will not be republished.

The new rule, §21.13, provides a process for individuals, groups, and County Historical Commissions (CHCs) to request removal of Official Texas Historical Markers and monuments. The Commission determined that this rule was necessary because no process for removal previously existed. This rule now allows for removal under the Commission's oversight.

The Commission received one comment opposed to new §21.13 from a commenter. This comment suggested that allowing markers to be removed would make it unlikely that any new markers will be installed. The purpose of the new rule is to provide a uniform process for removal subject to the Commission's oversight authority. Several people have requested removal for current markers, but the Commission does not have a process established to consider removal. Even so, the Commission does not anticipate that the adoption of this rule will generate many requests for removal nor should it affect applications for new markers. To this point, the Commission has received very few requests to remove markers. No changes were made based on this comment.

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by these amendments.

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 26. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

### 13 TAC §26.3

The Texas Historical Commission (Commission) adopts amendments to §26.3, relating to Practice and Procedure, in Title 13, Part 2, Chapter 26 of the Texas Administrative Code. The rule is adopted without changes to the proposed text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1319). The rule will not be republished.

Section 26.3 clarifies the interpretation of terms and phrases used in the Antiquities Code of Texas but not defined therein.

The definition §26.3(41) distinguishes between "Landmarks," defined under this Chapter as State Antiquities Landmarks, and aluminum "Markers" erected in cooperation with the Texas Historical Commission under Chapter 21, Subchapter B. Since markers are not considered to be structures, work on markers will not be issued Historic Buildings and Structures Antiquities Permits under this definition.

The revision to §26.3(43) fully elaborates upon the physical characteristics of "Monuments" while retaining the existing rule's focus on structures commemorating an event, person, or place. The revision clarifies that monuments may include landscape elements, as well as built or installed features. The previous reference to the Capitol grounds has been omitted to reflect the commission's absence of authority over this location under these rules.

No comments pertaining to these rule revisions were received during the thirty-day period following publication in the *Texas Register* on February 26, 2021.

The amendments are adopted under the authority of Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Antiquities Code of Texas in Texas Government Code §442.005(b). The Commission interprets this authority as allowing for the establishment of definitions related to historic buildings and structures designated as State Antiquities Landmarks.

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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Mark Wolfe

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Texas Historical Commission

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## SUBCHAPTER D. HISTORIC BUILDINGS AND STRUCTURES

### 13 TAC §26.22

The Texas Historical Commission (Commission) adopts amendments to §26.22, relating to Practice and Procedure, Title 13, Part 2, Chapter 26 of the Texas Administrative Code. The rule is adopted without changes to the proposed text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1323). The rule will not be republished.

Section 26.22 provides Antiquities permit categories under which all work done on historic buildings or structures and their sites will be reviewed under Chapter 26.

To clarify the application of Historic Buildings and Structures Antiquities Permits, the provisions clarify that monuments may be permitted under the Antiquities Code (§26.22(10)) while markers must comply with Chapter 21 as they are not considered to be structures (§26.22(11)).

No comments pertaining to these rule revisions were received during the thirty-day period following publication on February 26, 2021, in the *Texas Register*.

The amendments are adopted under the authority of Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Antiquities Code of Texas in Texas Government Code §442.005(b). The Commission interprets this authority as allowing for the establishment of definitions related to historic buildings and structures designated as State Antiquities Landmarks.

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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Mark Wolfe

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Texas Historical Commission

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For further information, please call: (512) 463-6218

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## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 533. PRACTICE AND PROCEDURE

##### SUBCHAPTER E. PETITION FOR ADOPTION OF RULES

### 22 TAC §533.50

The Texas Real Estate Commission (TREC) adopts new rule 22 TAC §533.50, Petition for Adoption of Rules, in Chapter 533,

Practice and Procedure, with non-substantive changes to the rule, as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1594). The rule will be republished.

The new rule §533.50 implements a statutory requirement that state agencies must prescribe by rule the form for a petition for adoption of rules and the procedure for its submission, consideration, and disposition.

The new rule was recommended by the Executive Committee.

Eight comments were received. Four comments were in support of the rule as published with one requesting a change in sentence structure. Two were neutral regarding the rule as published and two were opposed with one requesting simplified language. The Commission declined to make any changes to the rule based on these comments but did make a non-substantive change to add the agency's mailing address under subsection c.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, as well as Texas Government Code §2001.021, which requires state agencies to adopt by rule procedures for petitioning for the adoption of rules.

#### §533.50. *Petition for Adoption of Rules.*

(a) Any interested person, as defined by §2001.021, Government Code, may request a rule be adopted, amended, or repealed by submitting a written petition to the Commission.

(b) The written petition must include:

(1) the person's full name, mailing address, telephone number, and email address;

(2) a brief summary of the proposed action and its desired effect;

(3) a justification for the proposed action set out in narrative form with sufficient particularity to inform the Commission the reasons and arguments on which the person is relying;

(4) if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted; and

(5) if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.

(c) The written petition must be submitted to the Commission by:

(1) delivering the petition in person to the Commission's headquarters;

(2) sending the petition via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov);

(3) sending the petition via fax to (512) 936-3788, ATTN: General Counsel; or

(4) sending the petition via mail to P.O. Box 12188, Austin, Texas, 78711, ATTN: General Counsel.

(d) Not later than 60 days after the date of submission of a petition that complies with the requirements of this section, the Chair of the Commission, in consultation with Commission staff, shall review the petition and either:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) initiate a rulemaking proceeding under Chapter 2001, Government Code, by directing that the petition be placed on the next agenda for discussion by:

(A) the Commission; or

(B) the appropriate advisory committee with subject matter jurisdiction.

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

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TRD-202101792

Vanessa Burgess

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For further information, please call: (512) 936-3284



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

##### SUBCHAPTER J. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Title 25, Chapter 411, Subchapter J, concerning Standards of Care and Treatment in Psychiatric Hospitals. The repeal is comprised of §§411.451 - 411.455, 411.459, 411.461 - 411.465, 411.468, 411.471 - 411.477, 411.482 - 411.485, 411.488, 411.490, 411.493 - 411.496, 411.499, and 411.500.

The repeals are adopted without changes to the proposed text as published in the January 1, 2021, issue of the *Texas Register* (46 TexReg 81) and therefore will not be republished.

#### BACKGROUND AND JUSTIFICATION

The repeals are necessary to remove the rules in Chapter 411, Subchapter J, Standards of Care and Treatment in Psychiatric Hospitals and adopt new rules in Title 26, Part 1, Chapter 568, Standards of Care and Treatment in Psychiatric Hospitals. The rules for Title 26, Chapter 568 are published elsewhere in this issue of the *Texas Register* and are substantially similar to the rules proposed for repeal. The new rules comply with current statute, create consistent training guidelines, correct outdated citations, and update language throughout to reflect the transition to the new title.

#### COMMENTS

The 31-day comment period ended February 2, 2021.

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

### DIVISION 1. GENERAL REQUIREMENTS

### 25 TAC §§411.451 - 411.455

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



### DIVISION 2. ADMISSION

### 25 TAC §§411.459, 411.461 - 411.465

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



### DIVISION 3. EMERGENCY TREATMENT

### 25 TAC §411.468

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

Chief Counsel

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For further information, please call: (512) 834-4591



## DIVISION 4. SERVICE REQUIREMENTS

### 25 TAC §§411.471 - 411.477

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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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## DIVISION 5. DISCHARGE

### 25 TAC §§411.482 - 411.485

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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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## DIVISION 6. DOCUMENTATION

## 25 TAC §411.488

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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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## DIVISION 7. STAFF DEVELOPMENT

### 25 TAC §411.490

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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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## DIVISION 8. PERFORMANCE IMPROVEMENT

### 25 TAC §§411.493 - 411.496

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

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Department of State Health Services

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For further information, please call: (512) 834-4591



## DIVISION 9. REFERENCES AND DISTRIBUTION

### 25 TAC §§411.499, §411.500

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 161 and Chapters 571-578.

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

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Karen Ray

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Department of State Health Services

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For further information, please call: (512) 834-4591



## SUBCHAPTER M. STANDARDS OF CARE AND TREATMENT IN CRISIS STABILIZATION UNITS

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§411.601 - 411.604, 411.608 - 411.613, 411.617, 411.621 - 411.624, 411.628 - 411.633, 411.637, 411.641, 411.645, 411.646, 411.649, and 411.650 in Texas Administrative Code (TAC), Title 25, Part 1, Chapter 411, Subchapter M, concerning Standards of Care and Treatment in Crisis Stabilization Units. The repeal is adopted without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8995), and therefore will not be republished.

#### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0201(a)(2)(C), client services functions previously performed by the Department of State Health Services (DSHS) were transferred to the Texas Health and Human Services Commission (HHSC) on September 1, 2016, in accordance with Texas Government Code §531.0201 and §531.02011. The purpose of repealing and replacing these rules is to outline requirements for standards of care for individuals receiving treatment and services in a crisis

stabilization unit (CSU) to ensure the continued operation of CSUs.

New rules in 26 TAC, Part 1, Chapter 306, Subchapter B, Standards of Care and Treatment in Crisis Stabilization Units are adopted elsewhere in this issue of the *Texas Register*.

#### COMMENTS

The 31-day comment period ended January 19, 2021. During this period, HHSC did not receive comments regarding the proposed repeal.

## DIVISION 1. GENERAL REQUIREMENTS

### 25 TAC §§411.601 - 411.604

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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Karen Ray

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Department of State Health Services

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For further information, please call: (512) 838-4346



## DIVISION 2. ADMISSION

### 25 TAC §§411.608 - 411.613

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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

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Karen Ray  
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For further information, please call: (512) 838-4346



### DIVISION 3. EMERGENCY TREATMENT

#### 25 TAC §411.617

##### STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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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### DIVISION 4. SERVICE REQUIREMENTS

#### 25 TAC §§411.621 - 411.624

##### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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 May 7, 2021.

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Karen Ray  
Chief Counsel  
Department of State Health Services  
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For further information, please call: (512) 838-4346



### DIVISION 5. DISCHARGE

#### 25 TAC §§411.628 - 411.633

##### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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### DIVISION 6. DOCUMENTATION

#### 25 TAC §411.637

##### STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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## DIVISION 7. STAFF DEVELOPMENT

### 25 TAC §411.641

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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## DIVISION 8. SENTINEL EVENTS AND EXTERNAL REVIEWS

### 25 TAC §411.645, §411.646

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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## DIVISION 9. REFERENCES AND DISTRIBUTION

### 25 TAC §411.649, §411.650

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

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## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

##### SUBCHAPTER B. STANDARDS OF CARE IN CRISIS STABILIZATION UNITS

The Texas Health and Human Services Commission (HHSC) adopts new §306.41, concerning Purpose; §306.43, concerning Application; §306.45, concerning Definitions; §306.47, concerning General Provisions; §306.51, concerning Admission Criteria; §306.53, concerning Pre-admission Screening and Assessment; §306.55, concerning Voluntary Admission Criteria and Intake Process; §306.57, concerning Involuntary Admission Criteria and Intake Process; §306.59, concerning Voluntary Treatment Following Voluntary Admission; §306.61, concerning Crisis Stabilization Unit Medical Services; §306.63, concerning Crisis Stabilization Unit Nursing Services; §306.65,

concerning Crisis Stabilization Services and Recovery or Treatment Planning; §306.67, concerning Additional Standards of Care for Children and Adolescents; §306.71, concerning Discharge Planning; §306.73, concerning Discharge Notices; §306.75, concerning Discharge of a Voluntarily-Admitted Individual; §306.77, concerning Maximum Length of Stay for a Voluntarily-Admitted Individual; §306.79, concerning Discharge of an Involuntarily-Admitted Individual; §306.81, concerning Medical Record; §306.83, concerning Staff Training; §306.85, concerning Minimum Staffing Requirements; §306.87, concerning Protection of an Individual Receiving Crisis Stabilization Unit Services; §306.89, concerning Crisis Stabilization Unit Response to an Emergency Medical Condition; §306.91, concerning Transfers; §306.95, concerning Response to External Reviews.

New §§306.45, 306.47, 306.51, 306.53, 306.55, 306.57, 306.61, 306.67, 306.71, 306.73, 306.75, 306.77, 306.79, 306.81, 306.83, 306.85, 306.87, and 306.91 are adopted with changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9001). These rules will be republished. Sections 306.41, 306.43, 306.59, 306.63, 306.65, 306.89, and 306.95 are adopted without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9001), and therefore will not be republished. New §306.93 is being withdrawn elsewhere in this edition of the *Texas Register*.

#### BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Texas Government Code §531.0201(a)(2)(C), which requires the Department of State Health Services (DSHS) to ensure that client services functions previously performed by DSHS were transferred to HHSC on September 1, 2016. The new rules in the Texas Administrative Code (TAC) Title 26, Part 1, Chapter 306, Subchapter B, concerning Standards of Care in Crisis Stabilization Units, address the content of rules in 25 TAC Chapter 411, Subchapter M, concerning Standards of Care and Treatment in Crisis Stabilization Units. The rules in Chapter 411 are repealed elsewhere in this issue of the *Texas Register*.

The rules establish guidelines for the standards of care and treatment of individuals with mental illness or serious emotional disturbance who receive crisis stabilization services in crisis stabilization units (CSUs) licensed under Texas Health and Safety Code, Chapter 577 and 26 TAC Chapter 510 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

The rules outline the requirements for voluntary or involuntary admission, pre-admission screening and assessment, intake processes, treatment, services, and discharge for individuals in CSUs. The new rules establish responsibilities of CSU administrators and staff members, and introduce standards related to services provided to children and adolescents. The new rules allow licensed physician assistants (PAs) and advanced practice registered nurses (APRNs) to perform physician-delegated medical services and evaluations within their respective scopes of practice. The new rules also allow peer specialists to perform peer specialist services in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services), and allow qualified mental health professional-community services in accordance with 26 TAC Chapter 301, Subchapter G (relating to Mental Health Community Services Standards). The new rules establish standards related to staffing practices, staff training, and credentialing; and permit the use of telecommunication or information technology.

#### COMMENTS

The 31-day comment period ended January 19, 2021. During this period, HHSC received comments regarding the proposed rules from four commenters, including Citizens Commission on Human Rights-Texas, Disability Rights Texas, Hill Country Mental Health and Developmental Disabilities Center, and Texas Council for Developmental Disabilities. A summary of comments relating to the new Chapter 306, Subchapter B, Standards of Care in Crisis Stabilization Units and HHSC's responses follows.

**Comment:** Two commenters expressed concern that the definition for adult caregiver was intended to refer to parties who could seek temporary authorization to consent to voluntary inpatient mental health services for a child under Texas Family Code Chapter 35A. The commenters consequently recommended that the definition of adult caregiver under §306.45 be amended to include an adult person who receives an order under Texas Family Code, Chapter 35A to voluntarily admit a child to inpatient mental health services.

**Response:** HHSC declines to make modifications to the definition of adult caregiver in response to this comment. This term is intended to refer to non-parent parties with authority to provide care for a child, as distinguished from the specific authority to consent to temporary voluntary mental health services under Texas Family Code Chapter 35A. However, HHSC modified the list of persons that may request voluntary admission in §306.55(b)(2) to include a cross reference to Texas Family Code Chapter 35A, Temporary Authorization for Inpatient Mental Health Services For Minor Child.

**Comment:** One commenter recommended that the definition of crisis stabilization services in §306.45(13) and crisis stabilization unit in §306.45(14) retain the word "residential" to describe short-term residential treatment.

**Response:** HHSC agrees and revised the rules as recommended.

**Comment:** Two commenters recommended amending the definition of "monitoring" in §306.45(38) by adding the word "or" to clarify that monitoring would consist of either staff members observing an individual in person continuously or at pre-determined intervals.

**Response:** HHSC agrees and revised the rule as recommended.

**Comment:** One commenter recommended defining or clarifying the assessment tool adopted by HHSC in §306.45(54)(D).

**Response:** HHSC declines to make modifications to this rule in response to this comment. The name of the assessment tool is subject to change based on the HHSC-approved model of service delivery. The current uniform assessment tools for children and adolescents, and for adults, are maintained on the Health and Human Services website.

**Comment:** Two commenters recommended adding the citation, 25 TAC Chapter 415, Subchapter F, to the definition of restraint in §306.45(55).

**Response:** HHSC agrees and revised the rule as suggested.

**Comment:** Two commenters recommended adding the citation, 25 TAC Chapter 415, Subchapter F, to the definition of seclusion in §306.45(58).

**Response:** HHSC agrees and revised the rule as suggested.

Comment: Two commenters recommended retaining the definition of sentinel event in §306.45(60) which captures not only death and actual harm but events that result in potential harm, and two commenters recommended clarifying the expected purpose and result for reporting the information to HHSC Health Facility Licensing in §306.93(1).

Response: HHSC has removed the definition for sentinel event. A medical error or adverse event is reportable to HHSC pursuant to Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units). House Bill (H.B.) 1614, 78th Legislature, Regular Session, 2003, amended Texas Health and Safety Code, Chapter 577, by adding Subchapter B, Patient Safety Program requiring private psychiatric hospitals and crisis stabilization units to report certain medical errors to HHSC. This subchapter expired under its own terms on September 1, 2007; therefore, the reporting requirements associated with H.B. 1614 are no longer applicable. HHSC further revised the rules by deleting outdated language regarding sentinel events in §306.45 as necessary to remain consistent with Texas Health and Safety Code, Chapter 577 and Chapter 510 of this title. The subsequent definitions were renumbered. New §306.93 is being withdrawn elsewhere in this edition of the *Texas Register*.

Comment: Two commenters recommended adding a cross reference to 25 TAC Chapter 415, Subchapter A to the list of HHSC rules that providers must comply with under §306.47(g)(3) and suggested adding hyperlinks to the rules.

Response: HHSC declines to add hyperlinks at this time because the referenced Title 25 rule is subject to upcoming transfers to Title 26 of the TAC. However, HHSC revised the rule by adding the cross reference to new §306.47(g)(3) and renumbered subsequent paragraphs.

Comment: Two commenters recommended adding language in §306.57, §306.61(g)(4), §306.83(a)(1), §306.89(a)(2)(C), and §306.91(b), prohibiting a CSU from using an on-duty or off-duty law enforcement officer to assist with a transfer of an individual to a general hospital or another health care entity, or in an emergency medical condition.

Response: HHSC declines to make modifications to these rules in response to the comments. Law enforcement may be used for transportation as a method of last resort, in compliance with "the right not to be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available" in accordance with 25 TAC §404.154(29)(B). Additionally, HHSC does not have the authority to prohibit law enforcement accompaniment if an individual is brought to the CSU by an officer and the officer chooses to remain with the individual as the individual is considered to be in law enforcement custody at that time.

Comment: Two commenters recommended adding language in §306.47(g)(3) (renumbered on adoption to §306.47(g)(4)), §306.87(a), and §306.93 prohibiting the use of law enforcement officers, off-duty or contracted law enforcement officers, or off-duty contracted detention officers to restrain, seclude, or transport or to get, or guide, an individual to a room or floor at the CSU.

Response: HHSC declines to make modifications to these rules in response to this comment. HHSC does not have the authority to prohibit law enforcement accompaniment if an individual has been brought to the CSU by an officer and the officer chooses to remain with the individual, as the individual may potentially be in

law enforcement custody, particularly at the time of the pre-admission screening and assessment. Additionally, the definition of staff member in 25 TAC, §415.253(31) and §415.257 (relating to Staff Member Training) clarifies requirements and qualifications to initiate a restraint or seclusion in a CSU, which all CSU staff who conduct a restraint or seclusion must comply with. HHSC added a reference to applicable state laws and 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services) in §306.83(a)(1) and added a cross reference in §306.83(j) to 25 TAC §415.260 (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency), to ensure clarity that all CSU staff must comply with these standards, including training requirements, to conduct a restraint or seclusion.

Comment: Two commenters expressed concerns that three years of age was determined to be an appropriate age for admission to a CSU under §306.51(4)(A). The commenter stated it seemed a particularly young age and asked if there are other means to provide services to an individual (and their support system) age 5 or younger.

Response: HHSC agrees to modify §306.51(4)(A) - (C) by deleting the age requirement and adding the circumstances and statutory cross references identifying who is not authorized to request a voluntary admission to a CSU.

Comment: Two commenters recommended adding the word "immediate" in §306.51(4)(E) prior to inpatient treatment for the condition.

Response: HHSC agrees and revised the rule to include the term "immediate." Since the rules were renumbered, the change is reflected in §306.51(5)(B).

Comment: Three commenters expressed concern that §306.51(5) violates Health and Safety Code Chapter 573. Specifically, the commenters shared that an individual should not be admitted involuntarily to a CSU without an order of emergency detention, while two other commenters stated there is no statutory authority to detain someone just with the filing of an emergency detention application, rather an order of emergency detention is required. The commenters shared further concerns that an individual's lack of capacity to consent to voluntary admission does not provide authority for a CSU to detain the individual without an order of emergency detention.

Response: Texas Health and Safety Code §573.021(a) allows for temporary acceptance of an individual for a preliminary examination when an emergency detention application has been filed but before the order is received. Temporary acceptance for a preliminary examination of an individual is not the same as admission into a CSU for treatment. Regarding the authority to temporarily accept an individual unable to legally provide consent, HHSC agrees and revised §306.51(5) (renumbered on adoption to §306.51(6)), as recommended, by deleting information regarding an individual unable to consent to voluntary admission. Additionally, HHSC updated the statutory cross reference in renumbered §306.51(6)(A) for temporary acceptance of a person for whom an application for detention is filed.

Comment: Two commenters recommended §306.51(5)(B) should specify obtaining an order for court-ordered Inpatient Mental Health Services.

Response: HHSC agrees with the commenter. Since the rules were renumbered, HHSC modified §306.51(6)(B) to reflect statutory language.

Comment: Two commenters recommended clarifying that if an individual voluntarily brought themselves to a CSU the person has a right to leave the CSU at any time until they are admitted.

Response: HHSC agrees and revised §306.53(a) by adding new §306.53(a)(2) to reflect the right of an individual who voluntarily presents at a CSU to leave any time before admission.

Comment: Two commenters recommended clearly indicating what other mental health professionals meet the criteria to provide a pre-screening and assessment under §306.53.

Response: HHSC agrees and revised §306.53(a)(3)(B), as recommended, and deleted §306.53(a)(3)(B)(ii) for clarification.

Comment: Two commenters recommended revising the language in §306.53(d) to clarify that face-to-face means in person and telehealth indicates the services are being provided remotely.

Response: HHSC agrees and revised §306.53(d), §306.53(e)(1), and §306.67(a)(1) by deleting references to face-to-face and adding a reference to telemedicine under §306.53(d) and in-person to §306.67(a)(1).

Comment: One commenter recommended revising §306.53(e) to allow for the delegation of the examination for voluntary admission to a CSU to a non-physician professional that may include an APRN or PA.

Response: HHSC declines to make modifications to this rule at this time. The Office of the Attorney General (OAG) in Opinion GA-0066 (2003) opined that that the examination under Health and Safety Code §572.002 may not be delegated by a physician.

Comment: Two commenters expressed concerns that there is no timeframe in §306.53(e) for the required physician examination. Additionally, the commenters recommended clarifying where the individual is while they wait for the physician examination.

Response: HHSC agrees to clarify where an individual is while they wait for the physician examination. HHSC revised §306.53(b) by adding new §306.53(b)(3) requiring CSU policy to include a process for ensuring an individual who is waiting for a physician examination remains in a location that is determined to be clinically appropriate and available. HHSC declines to make modifications to this rule in response to the examination timeframe. The physician examination timeframe for voluntary admission is within 72 hours before or 24-hours after admission as provided in §306.55(d)(3)(A). The timeframe for emergency detention preliminary examination is 12 hours as provided in §306.57(b)(1) and (d)(1)(A).

Comment: Two commenters recommended clarifying in §306.55(b)(1) that the adult caregiver who has obtained an order under Texas Family Code Chapter 35A may request a voluntary admission of an individual into a CSU.

Response: HHSC agrees and revised §306.55 by removing adult caregiver, or LAR from §306.55(b)(2) and adding the recommended language to new §306.55(b)(3).

Comment: Two commenters recommended retaining language in 25 TAC §411.609(b) regarding capacity to consent in §306.55(d). Additionally, the commenters recommended the person, at a minimum, should be referred to the local mental health authority (LMHA) or local behavioral health authority (LBHA) for crisis services in §306.55(d)(2)(B)(i).

Response: HHSC agrees to retain language from §411.609(b) in §306.51(4)(A) and §306.57(c) and (f) and added an individual

with capacity to consent in new §306.55(b)(4). HHSC agrees with the recommendation regarding §306.55(d)(2)(B)(i) and revised the rule to include the LMHA, LBHA, and local intellectual and developmental disability authority crisis services.

Comment: Two commenters recommended language be added to clarify that if the physician conducting the physical assessment and psychiatric examination of the individual determines the individual does not meet eligibility to receive inpatient mental health services, the individual cannot be billed in accordance with §572.0025(f-2).

Response: HHSC agrees with the commenter and modified §306.55 by moving §306.55(d)(3)(C) to new §306.55(e) and adding new subsection (f) in accordance with Texas Health and Safety Code §572.0025(f-1) and (f-2) which prohibits billing if an individual does not meet admission eligibility.

Comment: One commenter recommended that §306.57(c) be revised to allow for the examination to be completed by an APRN or PA following admission under Emergency Detention.

Response: HHSC declines to make modifications to this rule at this time. This is based on OAG guidance provided under OAG Opinion GA-0066 (2003) that the examination under Health and Safety Code §572.002 may not be delegated by a physician.

Comment: Two commenters expressed concern that §306.57(a) and (c) contradicts the age limit specified in 306.51(4)(A). The commenters shared that an individual's family member does not have authority to transport the individual to the CSU for emergency detention, and that rather only an LAR may do so. The commenters recommended deleting the reference to the family member in §306.57(b)(1)(B) and only reference the LAR. The commenters also expressed concern that a suitable location in §306.57(d)(2)(C)(iii) is vague.

Response: HHSC agrees and revised §306.57(a)(1), §306.57(b)(1)(B), and §306.57(c) as recommended. HHSC agrees and revised §306.57(d)(2)(C)(iii) by clarifying a suitable location identified by the individual, or LAR, if applicable.

Comment: Two commenters recommended that §306.57(g)(1)(A) include individual rights which must occur both orally and in writing in accordance with 25 TAC Chapter 404. The commenters recommended that the intake include obtaining relevant information about the individual including information about finances, insurance benefits, and advance directives, providing information about the CSU's services and treatment as they relate to the individual, the information about the protection and advocacy system, and information about the Ombudsman system.

Response: HHSC declines to make modifications to this rule in response to replicating information in §306.57(g). However, HHSC modified §306.57(g)(1)(A) and (B) by providing cross references to where the requested information is located in the division.

Comment: Two commenters recommended adding a timeframe in §306.61(e) by which the psychiatric evaluation must occur.

Response: HHSC declines to make modifications to this rule in response to this comment. The timeframe for the initial psychiatric evaluation is located in §306.55(d)(3)(A). The re-evaluation timeframe is located in §306.61(f).

Comment: Two commenters recommended that §306.61(g)(3) be deleted to prevent a medical director from referring an individual that has been admitted instead of transferring the individual.

Response: HHSC declines to make modifications to this rule in response to this comment. The manner in which an individual's medical treatment needs are addressed is the decision of the physician consistent with good professional judgment, the capabilities of each facility, and rights of the individual or the individual's LAR, in accordance with Title 25, Part 1, TAC §404.155(b)(6).

Comment: Two commenters recommended adding language in §306.75(b) to clarify that if a parent of a minor child or an adult caregiver requests discharge, the CSU must discharge the child immediately. The commenter suggests that the four-hour rule does not apply because they cannot be committed to inpatient care. Additionally, the commenter suggested adding language to clarify that if the voluntary admission was initiated by an adult caregiver, the child must be discharged within ten days in accordance with the Texas Family Code §34A.005(d)(3).

Response: HHSC declines to make the requested modification to §306.75(b). Texas Health and Safety Code §572.001 states a person younger than 18 years of age may not be involuntarily committed unless provided by Chapter 572, Chapter 55, Family Code, or department rule. Texas Health and Safety Code §572.004(f) requires an examination by a physician to allow for consideration of whether an individual, including a minor, may require an application for emergency detention or court ordered inpatient care. However, HHSC revised §306.77 by adding new §306.77(4) adding language related to the maximum length of stay of a child or adolescent admitted under Texas Family Code 35A, Order of Temporary Authorization.

Comment: One commenter recommended deleting the term "medical director" under §306.79(a)(1)(B) since there are others who may apply for the order for further detention.

Response: HHSC agrees and revised §306.79(a)(1)(B) as recommended.

Comment: Two commenters recommended revising §306.87(a) to clarify that protections apply to an individual accepted for pre-admission screening as well as individuals who have been admitted.

Response: HHSC agrees and added new §306.53(b)(4) regarding protections to an individual accepted for pre-admission screening and assessment. Cross references were also added in §306.87(a) for 25 TAC §415.260 (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency) and §415.266 (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

Comment: Two commenters expressed concern with language in §306.91, relating to transfers due to dangerous behaviors, and stated that such routine transfers are not practical because doing so implies that no individual on an emergency detention order should remain in a CSU. The commenters further shared that CSUs are allowed to admit an individual on an emergency detention order which requires the individual to be at substantial risk of serious harm. An individual should not be transferred solely because they meet the criteria for emergency detention.

Response: HHSC agrees and revised §306.91(a) and §306.91(a)(1) by addressing issues related to a CSU transporting an individual as soon as possible to an appropriate facility when a physician, or designee, determines the individual is at serious risk of harm to self or others and the CSU is unable to provide an adequate assurance of safety. HHS also amends (a)

to include contacting law enforcement to transfer an individual under an emergency detention who has not yet been admitted or obtaining permission from the court that issued the order for emergency detention or order of protective custody.

Comment: Two commenters recommended delineating the timeframe within which the transfer must occur under §306.91(a)(3).

Response: HHSC declines to make modifications to this rule in response to this comment given that CSUs cannot guarantee when a bed at another appropriate inpatient mental health facility may be available. HHSC, however, did amend (a) to require CSUs to facilitate transfer as soon as possible.

HHSC made minor grammatical edits to §306.45(37); §306.45(58); §306.45(59); §306.45(61) - (73) were renumbered to §306.45(60) - (72); §306.51(3)(B) - (D); §306.51(5) - (7); §306.53(a)(3); §306.53(b)(2)(C); §306.55(b)(1) - (2); §306.55(d)(2)(B)(ii); §306.55(d)(3); §306.57(d)(2); §306.77(2) - (3); §306.79(a)(1)(B); §306.81(a)(12); §306.83(j); and §306.85(a) - (b).

HHSC made minor editorial changes to §306.45(22) by updating a cross reference; §306.47(g)(3) by adding a cross reference to 25 TAC Chapter 415, Subchapter A (relating to Prescribing Psychoactive medication); §306.51(3) - (4) by adding the term "voluntary"; §306.53(d) by adding the use of telemedicine medical services and updating the cross reference to Texas Health and Safety Code §573.024(a) - (d); §306.55(b)(1) by removing the cross reference to Texas Family Code Chapter 32; §306.55(b)(2) by updating information consistent with statute; §306.67(a)(1) by adding "or telemedicine medical" for rule consistency; §306.73 by updating a cross reference; and deleting the title to §306.91(a) for formatting consistency and accuracy.

HHSC made editorial changes to §306.45(44) consistent with the definition in 26 TAC Chapter 303, Subchapter A; §306.45(50)(B) by replacing the word person with individual; §306.51 by adding paragraph (3)(A) to ensure consistency with Texas Health and Safety Code Chapter 572; §306.57(A) and (B) by replacing the word "face-to-face" with terminology consistent with this subchapter; §306.57(d)(2) by replacing the word adult with individual; §306.57(d)(2)(A) by adding notifying the individual's LAR, if applicable, and any other person authorized by the individual, of the individual's release; §306.57(d)(2)(C) for coordinating with the individual, the individual's LAR, if applicable, or the apprehending county to arrange the individual's transportation after release; §306.61(e), §306.71(b), §306.75(g), and §306.79(a)(1)(A) by deleting references to physician-delegated PA or APRN.

## DIVISION 1. GENERAL REQUIREMENTS

### 26 TAC §§306.41, 306.43, 306.45, 306.47

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

§306.45. *Definitions.*

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

(1) *Administrator*--A person or entity that has authority to represent a facility and is responsible for implementing and supervising its administrative policies and procedures and for administratively supervising the provision of services to individuals on a day-to-day basis.

(2) *Administrator's designee*--A staff member designated in a facility's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) *Admission*--The acceptance of an individual for crisis stabilization services based on a physician's order issued in accordance with §306.55 (relating to Voluntary Admission Criteria and Intake Process) and §306.57 (relating to Involuntary Admission Criteria and Intake Process) of this subchapter.

(4) *Admission examination*--A psychiatric examination and physical assessment conducted by a physician, to determine if an individual requesting voluntary admission to an inpatient mental health facility meets clinical criteria for admission, in accordance with Texas Health and Safety Code §572.0025(f).

(5) *Adolescent*--An individual at least 13 years of age, but younger than 18 years of age.

(6) *Adult*--An individual 18 years of age or older.

(7) *Adult caregiver*--An adult person whom a parent has authorized to provide temporary care for a child, as defined in Texas Family Code §34.0015(1).

(8) *APRN*--Advanced practice registered nurse. A registered nurse licensed by the Texas Board of Nursing and as provided in Texas Occupations Code §301.152.

(9) *Assessment*--The administrative process an inpatient mental health facility uses to gather information from an individual to determine if the admission is clinically justified, in accordance with Texas Health and Safety Code §572.0025(h)(2), including a medical history and the problem for which the individual is seeking treatment.

(10) *Business day*--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(11) *Child*--An individual at least three years of age, but younger than 13 years of age.

(12) *Confidential information*--Any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of or includes any or all of the information that must be protected from unauthorized use or disclosure as required by applicable state or federal laws, and as defined in 1 TAC §390.1(5) (relating to Definitions).

(13) *Crisis stabilization services*--Short-term residential treatment designed to reduce acute symptoms of a mental illness or serious emotional disturbance of an individual and prevent admission of the individual to an inpatient mental health facility.

(14) *CSU*--Crisis stabilization unit. A short-term residential treatment unit designed to reduce an individual's acute symptoms of mental illness or serious emotional disturbance instead of admission to an inpatient mental health facility, licensed in accordance with Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) and Texas Health and Safety Code Chapter 577.

(15) *Day*--Calendar day, unless otherwise specified.

(16) *DD*--Developmental disability. As listed in Texas Health and Safety Code §531.002(15), a severe, chronic disability attributable to mental or physical impairment or a combination of mental and physical impairments that:

(A) manifest before the individual reaches 22 years of age;

(B) are likely to continue indefinitely;

(C) reflect the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) result in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(17) *Discharge*--The formal release of an individual from the custody and care of an inpatient mental health facility in accordance with Texas Health and Safety Code §572.004.

(18) *Emergency medical condition*--In accordance with the Emergency Medical Treatment & Labor Act (42 U.S.C. §1395dd) (Relating to examination and treatment for emergency medical conditions and women in labor), a medical condition manifested by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) in the case of a pregnant woman having contractions:

(i) inadequate time to arrange a safe transfer to a hospital before delivery; or

(ii) a transfer posing a threat to the health or safety of the woman or the unborn child.

(19) *General hospital*--A hospital operated primarily to diagnose, care for, and treat individuals who are physically ill and licensed in accordance with Texas Health and Safety Code Chapter 241.

(20) *HHSC*--Texas Health and Human Services Commission or its designee.

(21) *ID*--Intellectual disability. Consistent with Texas Health and Safety Code §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originates during the developmental period.

(22) *IDT*--Interdisciplinary team. A group of licensed, credentialed, and unlicensed staff members who possess the knowledge, skills, and expertise to develop and implement an individual's treatment or recovery plan and also includes:

- (A) the individual's treating physician;
  - (B) the individual, and the individual's LAR or adult caregiver, if applicable;
  - (C) the staff members identified in the treatment or recovery plan as responsible for providing or ensuring the provision of each treatment in accordance with §568.61(c)(1)(E)(iii) of this title (relating to Inpatient Mental Health Treatment and Treatment Planning);
  - (D) any person identified by the individual, and the individual's LAR or adult caregiver if applicable, unless clinically contraindicated; and
  - (E) other staff members as clinically appropriate.
- (23) Individual--A person seeking or receiving services under this subchapter.
- (24) Inpatient mental health facility--A mental health facility that can provide 24-hour residential and psychiatric services and that is:
- (A) a facility operated by HHSC;
  - (B) a private mental hospital licensed by HHSC;
  - (C) a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;
  - (D) an identifiable part of a general hospital in which diagnosis, treatment, and care for individuals with mental illness is provided and that is licensed by HHSC; or
  - (E) a hospital operated by a federal agency.
- (25) Intake--The administrative process for gathering information about an individual and giving an individual information about an inpatient mental health facility and the facility's treatment and services, in accordance with Texas Health and Safety Code §572.0025(h)(3).
- (26) Involuntarily-admitted individual--An individual receiving inpatient mental health facility services based on an admission made in accordance with:
- (A) Texas Health and Safety Code Chapter 573 and described in §306.57(a) of this subchapter; or
  - (B) Texas Health and Safety Code §574.021 and described in §306.57(f) of this subchapter.
- (27) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual regarding a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.
- (28) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.
- (29) Legal holiday--A holiday listed in the Texas Government Code §662.021 and an officially designated county holiday applicable to a court in which proceedings under the Texas Mental Health Code are held.
- (30) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code §533A.035.

- (31) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).
- (32) LPHA--Licensed practitioner of the healing arts. A person who possesses any of the following state licenses is considered an LPHA and is automatically certified as a qualified mental health professional-community services (QMHP-CS):
- (A) a physician;
  - (B) a physician assistant;
  - (C) an APRN;
  - (D) a licensed psychologist;
  - (E) a licensed professional counselor;
  - (F) a licensed clinical social worker; or
  - (G) a licensed marriage and family therapist.
- (33) LVN--Licensed vocational nurse. A person licensed as a vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.
- (34) Medical director--A physician who is board eligible or certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry and who provides clinical and policy oversight for the CSU.
- (35) Medical record--A compilation of systematic and organized information relevant to the services provided to an individual.
- (36) Medical services--Acts or services provided by a physician acting as described in Texas Occupations Code Chapter 151, or as delegated by a physician, in accordance with Texas Occupations Code Chapter 157.
- (37) Mental illness--An illness, disease, or condition, other than a sole diagnosis of epilepsy, dementia, substance use disorder, ID, or DD that:
- (A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or
  - (B) grossly impairs behavior as demonstrated by recent disturbed behavior.
- (38) Monitoring--One or more staff members observing an individual in person continuously or at pre-determined intervals; as ordered by a physician or physician-delegated physician's assistant (PA) or APRN; or by established protocol; and intervening when necessary to protect the individual from harming self or others.
- (39) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.
- (40) Nursing services--Acts or services provided by a registered nurse (RN) acting within the RN's scope of practice and assigned to an LVN, or delegated to an unlicensed person, in accordance with Texas Occupations Code Chapter 301.
- (41) Nursing staff--A person required to be licensed in accordance with Texas Occupations Code Chapter 301 to engage in professional or vocational nursing or the person delegated to perform common nursing functions under the authority of an RN.
- (42) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §531.02251, which serves as a neutral party to help individuals, including individuals who are uninsured or have public or private health benefit coverage

and behavioral health care providers navigate and resolve issues related to the individual's access to behavioral health care, including care for mental health conditions and substance use disorders.

(43) PA--Physician's assistant. A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code Chapter 204.

(44) PASRR--Preadmission screening and resident review.

(45) PASRR Level I screening--The process of screening an individual seeking admission to a nursing facility to identify whether the individual is suspected of having a mental illness, ID, or DD.

(46) PASRR Level II evaluation--A face-to-face evaluation:

(A) of an individual seeking admission to a nursing facility who is suspected of having a mental illness, ID, or DD; and

(B) performed by a LIDDA, LHMA, or LBHA to determine if the individual has a mental illness, ID, or DD and, if so, to:

(i) assess the individual's need for care in a nursing facility;

(ii) assess the individual's need for specialized services; and

(iii) identify alternate placement options.

(47) Peer specialist--A person who uses lived experience, in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote an individual's recovery and resiliency, in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services).

(48) Physician--A staff member:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(49) Pre-admission screening--The clinical process used by a QMHP-CS or LPHA to gather information from an individual, including a medical history, any history of substance use, trauma, and the problem for which the individual is seeking treatment to determine if a physician should conduct an admission examination.

(50) Preliminary examination--The psychiatric examination and assessment for medical stability performed and documented by a physician in accordance with Texas Health and Safety Code §573.022 to determine if emergency detention in an inpatient mental health facility is clinically justified for an individual for whom:

(A) an application for emergency detention is filed in accordance with Texas Health and Safety Code §573.011;

(B) a peace officer or emergency medical services personnel of an emergency medical services provider transporting the individual in accordance with a memorandum of understanding executed in accordance with Texas Health and Safety Code §573.005 files a notification of detention completed by the peace officer in accordance with Texas Health and Safety Code §573.002(a); or

(C) the LAR transporting their adult ward, without the assistance of a peace officer, in accordance with Texas Health and Safety Code §573.003, files an application for detention in accordance with Texas Health and Safety Code §573.004.

(51) Psychosocial rehabilitative services--Services that assist an individual in regaining and maintaining daily living skills required to function effectively in the community.

(52) QMHP-CS--Qualified mental health professional-community services. A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is an RN; or

(C) completes an alternative credentialing process as determined by an LMHA or LBHA in accordance with HHSC requirements.

(53) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(54) Recovery or treatment plan--A written plan:

(A) is developed in collaboration with the individual, and the individual's LAR or adult caregiver if applicable, and a QMHP-CS or LPHA;

(B) is amended at any time based on an individual's needs or requests;

(C) guides the recovery process and fostering resiliency;

(D) is completed in conjunction with the assessment tool adopted by HHSC;

(E) identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) includes recommended services and supports or reasons for the exclusion of services and supports.

(55) Restraints--Any personal, mechanical, or chemical restraint defined in 25 TAC §415.253 (relating to Definitions).

(56) RN--Registered nurse. A staff member licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(57) Screening--Activities performed by a QMHP-CS to:

(A) collect triage information either in person, or through telephone or telehealth interviews with an individual or collateral contact;

(B) determine if the individual's need is emergent, urgent, or routine, and conducted before the in person or telehealth assessment to determine the need for emergency services; and

(C) determine the need for immediate assessment and mental health treatment recommendations.

(58) Seclusion--The involuntary separation of an individual from other individuals for any period of time and or the placement of the individual alone in an area from which the individual is prevented from leaving, as defined in 25 TAC §415.253(28).

(59) SED--Serious emotional disturbance. A diagnosed mental health disorder that substantially disrupts a child's or adoles-

cent's ability to function socially, academically, and emotionally in accordance with Texas Government Code, §531.251.

(60) Serious physical injury--An injury determined by a physician, or physician-delegated PA or APRN, to require treatment by an appropriately licensed medical professional or licensed health-care professional, or in an emergency department or licensed hospital.

(61) Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the individual's transfer from a facility or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(62) Staff member--Personnel including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(63) Staffing plan--A written plan that:

(A) demonstrates the number, qualifications, and responsibilities of staff members, including the administrator or designee, are appropriate for the size and scope of the services provided and that workloads are reasonable to meet the needs of individuals receiving services; and

(B) identifies staffing patterns, hours of coverage, and plans for providing back-up staff in emergencies.

(64) Substance use disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets the criteria described in the current edition of the *Diagnostic Statistical Manual of Mental Disorders* for substance use disorders.

(65) TAC--Texas Administrative Code.

(66) Telehealth service--A health-care service, other than telemedicine medical services, delivered by a health professional licensed, certified or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification or entitlement to an individual at a different physical location other than the health professional using telecommunications or information technology, in accordance with Texas Occupation Code §111.001(3).

(67) Telemedicine medical service--A health-care service delivered to an individual at a different physical location using telecommunications or information technology by:

(A) a physician licensed in Texas; or

(B) a health professional who acts under the delegation and supervision of a physician licensed in Texas and within the scope of the health professional's license in Texas.

(68) Transfer--The movement (including the discharge) of an individual outside a facility at the facility's direction, but it does not include such a movement of an individual who has been declared dead or leaves the facility without the facility's permission.

(69) Treating physician--A physician who coordinates and oversees an individual's treatment.

(70) Unit--A discrete and identifiable area of an inpatient mental health facility that includes individuals' rooms or other living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(71) UP--Unlicensed person. A person, not licensed as a health care provider, who provides certain health related tasks and functions in a complementary or assistive role to the RN in providing direct care of an individual or carrying out common nursing functions as described in 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and care in conformity with this chapter:

(A) who is monetarily compensated, including nurse aides, assistants, attendants, technicians, and other individuals providing care or assistance of health-related services; or

(B) who is a professional nursing student, not licensed as an RN or LVN, providing care for monetary compensation and not as part of their formal education.

(72) Voluntarily admitted individual--An individual receiving facility services based on an admission in accordance with:

(A) §306.55 of this subchapter (relating to Voluntary Admission Criteria and Intake Process); or

(B) §306.59 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission).

§306.47. General Provisions.

(a) The CSU must be open and provide services to individuals 24-hours a day, seven days a week, including admissions, based on the CSU's capability and capacity.

(b) The CSU must develop, and the medical director must approve, the CSU's written policies and procedures that ensure the CSU's compliance with this subchapter.

(c) All staff members must comply with this subchapter and the policies and procedures of the CSU.

(d) A CSU administrator, or administrator's designee must take appropriate measures to ensure a staff member's compliance with this subchapter and the policies and procedures of the CSU.

(e) A CSU nursing supervisor must ensure all orders issued by a physician, or physician-delegated PA or APRN, for an individual are appropriately implemented pursuant to state nursing licensure requirements.

(f) Except as provided by §306.51 of this subchapter (relating to Admission Criteria) or applicable state law, a physician may delegate any of the medical services described in this subchapter in accordance with Texas Occupations Code Chapter 157, Subchapter A.

(g) A CSU must comply with the following HHSC rules:

(1) Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units);

(2) 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);

(3) 25 TAC Chapter 415, Subchapter A (relating to Prescribing Psychoactive medication);

(4) 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services);

(5) 25 TAC Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services);

(6) 25 TAC Chapter 417, Subchapter K (relating to Abuse, Neglect and Exploitation in TDMHMR Facilities); and

(7) 22 TAC Chapter 174, Subchapter B (relating to Mental Health Services).

(h) A CSU physician is prohibited from administering:

(1) electroconvulsive therapy, a treatment in which controlled, medically applied electrical current results in a therapeutic seizure, usually attenuated by anesthesia and muscle relaxants; and

(2) a chemical or gaseous agent used to induce a seizure for therapeutic purposes, instead of, or as a substitute for, electroconvulsive therapy.

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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For further information, please call: (512) 838-4346



## DIVISION 2. ADMISSION

### 26 TAC §§306.51, 306.53, 306.55, 306.57, 306.59

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

#### §306.51. Admission Criteria.

A CSU must develop and implement written admission criteria that:

- (1) the CSU medical director approves;
- (2) uniformly applies to all individuals;
- (3) permits the voluntary admission of an individual only if the following criteria are met:

(A) the individual is authorized to do so in accordance with Texas Health and Safety Code §572.001;

(B) the individual has a mental illness or SED;

(C) the services provided in the CSU may reduce the individual's acute symptoms; and

(D) the CSU provides clinically appropriate environmental restrictions and levels of monitoring, described in §306.87 of this subchapter (relating to Protection of an Individual Receiving Crisis Stabilization Unit Services), that:

(i) ensures the safety of the individual; and

(ii) prevent the individual from causing serious harm to self or others;

(4) prevents voluntary admission of an individual who:

(A) is not authorized to request admission in accordance with Texas Health and Safety Code §572.00 or does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician;

(B) presents to the CSU for an emergency detention preliminary examination, in accordance with Texas Health and Safety Code §573; and

(C) presents to the CSU on an order of protective custody or who has been committed to court-ordered inpatient mental health treatment in accordance with Texas Health and Safety Code, Chapter 574;

(5) prevents voluntary or involuntary admission of an individual who:

(A) requires specialized care not available at the CSU;

or  
(B) has a physical medical condition that is unstable and could reasonably be expected to require immediate inpatient treatment for the condition;

(6) allows temporary acceptance of an individual for whom an emergency detention application is filed, or for whom a peace officer has detained, by:

(A) temporarily accepting an individual for preliminary examination for whom an application of detention has been filed initiating an emergency detention proceeding in accordance with Texas Health and Safety Code §573.021(a); or

(B) filing an application and obtaining a written order of protective custody as part of an individual's evaluation for court-ordered Inpatient Mental Health Services in accordance with Texas Health and Safety Code Chapter 574, Subchapter B;

(7) includes a process for attempts to gain consent for administration of psychoactive medications from an individual, and an individual's LAR or adult caregiver, as required by applicable law and rule.

#### §306.53. Pre-admission Screening and Assessment.

(a) Pre-admission screening and assessment.

(1) Before admission to a CSU, an individual must meet clinical criteria for admission, as determined by pre-admission screening and assessment.

(2) An individual who voluntarily presents to the CSU may leave the CSU at any time during the pre-admission screening and assessment process before the individual's admission.

(3) Pre-admission screening and assessment of an individual must:

(A) occur either in the CSU or in the community at any location where mental health crisis services are provided; and

(B) be provided by a QMHP-CS or LPHA trained in accordance with HHSC screening and assessment requirements policy and displaying competency in all domains of crisis screening and assessment in accordance with §301.331(b) of this title (relating to Competency and Credentialing).

(b) CSU screening and assessment policy. CSU screening and assessment policy must include a process for:

(1) accessing an individual's community-based screening and assessment; and

(2) conducting CSU screenings that address the criteria for immediate:

- (A) assessment of risk of deterioration and danger to self and others;
- (B) medical screening and assessment; and
- (C) psychiatric examination;

(3) ensuring an individual who is waiting for a physician examination remains in a location that is determined to be clinically appropriate and available; and

(4) ensuring that an individual who presents to a CSU for pre-admission screening and assessment is afforded the protections in §306.87 of this subchapter (relating to Protection of an Individual receiving Crisis Stabilization Unit Services).

(c) Screening. Pre-admission screening identifies the acuity of the individual's crisis episode and determines the need for further assessments, including assessments to determine risk of deterioration and immediate danger to self and others, in accordance with Texas Health and Safety Code §572.0025(f) and §573.021. The initial screening of an individual must lead to:

- (1) immediate and appropriate referrals; and
- (2) documentation that incorporates the following domains:
  - (A) suicide risk screening;
  - (B) homicide risk screening; and
  - (C) risk of deterioration.

(d) Assessment. If a pre-admission screening indicates an individual requires immediate assessment to determine risk of deterioration and immediate danger to self and others, the assessment must be conducted with the individual, either in person or through the use of telemedicine medical services or telehealth services in accordance with 22 TAC §174.9(2) (relating to Provision of Mental Health Services), and must include:

- (1) a suicide assessment that documents current and past suicide risks regarding suicidal ideation, plans, and past suicide attempts;
- (2) a psychosocial assessment that includes historical and current information including identification of social, psychological, environmental, and cultural factors that may be contributing to the emergency; and
- (3) a mental health assessment, documenting symptomology, functionality, historical and current diagnosis, and treatment for mental illnesses or serious emotional disturbances and, when available:
  - (A) a review of records of past treatment;
  - (B) a review of history from collateral sources as permitted by Health Insurance Portability and Accountability Act;
  - (C) a consult with current healthcare providers;
  - (D) a review of history of previous treatment and the response to that treatment, including a record of dose, response, side effects and adherence to past psychiatric medications; and
  - (E) an up-to-date record of all medications currently prescribed, and the name of the physician or provider with prescriptive authority.

(e) Physician examination. If a pre-admission assessment indicates an individual requires immediate physician examination to de-

termine clinical need for CSU admission, the examination may not be delegated to a non-physician, in accordance with Texas Health and Safety Code §572.0025(f), and:

(1) must be conducted with the individual, either in person or through telemedicine medical services, in accordance with Texas Health and Safety Code §572.0025(f) and §573.021; and

(2) must include:

(A) a physical examination consisting of an assessment for medical stability; and

(B) a psychiatric examination.

§306.55. *Voluntary Admission Criteria and Intake Process.*

(a) CSU staff members, trained in accordance with §306.83(h) - (i) of this subchapter (relating to Staff Training), must conduct the intake and admission process in accordance with Texas Health and Safety Code §572.0025(e) and §572.0025(h)(3).

(b) Voluntary admission into a CSU may be requested by:

(1) an individual 16 years of age or older, in accordance with Texas Health and Safety Code §572.001;

(2) the parent, managing conservator, or guardian of an individual younger than 18 years of age, in accordance with Texas Health and Safety Code §572.001 or Texas Family Code Chapter 35A;

(3) the adult caregiver of an individual, who has obtained an order under Texas Family Code Chapter 35A when the individual is younger than 18 years of age; or

(4) an individual with capacity to consent.

(c) A request for admission must be made in accordance with Texas Health and Safety Code §572.001 and must:

(1) be in writing and signed by the individual, and the individual's parent, adult caregiver, or LAR; and

(2) include a statement that the individual:

(A) has capacity to consent to the administration of psychoactive medication, administered in accordance with Texas Health and Safety Code §576.025;

(B) agrees to voluntarily remain in the CSU until discharge; and

(C) consents to diagnosis, observation, care and treatment until the earlier of one of the following occurrences:

(i) the discharge of the individual; or

(ii) the individual leaves the CSU after a request for discharge is made, in accordance with Texas Health and Safety Code §572.004.

(d) Voluntary admission occurs only if:

(1) a request for admission is made in accordance with subsection (c) of this section;

(2) the individual receives pre-admission screening and assessment, in accordance with the CSU's written policies and procedures, to determine if a physician admission examination is required:

(A) if the pre-admission screening and assessment is conducted by a physician, the physician may conduct the pre-admission screening and assessment as part of the physician admission examination referenced in §306.53(d) of this division (relating to Pre-admission Screening and Assessment); and

(B) if the QMHP-CS or LPHA conducting pre-admission screening and assessment determines:

(i) the individual does not need a physician admission examination, then the CSU may not admit the individual and must refer the individual to alternative services, as appropriate and available, including LMHA, LBHA, or LIDDA crisis services; or

(ii) the individual does need a physician-admission examination, a physician must conduct an admission examination of the individual before CSU admission;

(3) a physician in accordance with Texas Health and Safety Code §572.0025 (f):

(A) conducts either in person or through telemedicine medical services, or consults with a physician who conducted, a physical assessment and psychiatric admission examination within 72 hours before or 24 hours after admission, as described in §306.53 of this division (relating to Pre-Admission Screening and Assessment), and may not delegate the examination to a non-physician; and

(B) provides an admission order;

(i) in writing and signed by the issuing physician; or

(ii) if the order is provided orally or, if the electronic order is unsigned, an original signed order must be provided to the facility within 24 hours;

(4) the administrator or administrator's designee has signed a written statement agreeing to admit the individual, in accordance with Texas Health and Safety Code §572.0025; and

(5) a CSU staff member, trained in accordance with §306.83(i) of this subchapter, completes intake procedures in accordance with Texas Health and Safety Code §572.0025(e) and §572.0025(h)(3), that includes:

(A) obtaining relevant information about the individual, including information about finances, insurance benefits, and advance directives;

(B) explaining, orally and in writing, the individual's rights in a language and format easily understandable to the individual, or the individual's LAR or adult caregiver, as applicable;

(C) explaining, orally and in writing, the CSU's services and treatment as they relate to the individual;

(D) informing the individual, orally and in writing, of the existence, telephone number, and address of the protection and advocacy system established in Texas;

(E) informing the individual of the availability of information and assistance from the Ombudsman by contacting the Ombudsman at 1-800-252-8154 or online at [hhs.texas.gov/ombudsman](http://hhs.texas.gov/ombudsman), and the Health Facility Licensing complaints line at 1-888-973-0022; and

(F) determining whether the individual comprehends the information provided in accordance with subparagraphs (B) - (E) of this paragraph.

(e) An individual who is admitted to a CSU before the physical assessment and psychiatric admission examination is conducted must be discharged by the physician immediately if the physician conducting the physical assessment and psychiatric examination of the individual determines the individual does not meet the clinical standards to receive inpatient mental health services, in accordance with Texas Health and Safety Code §572.0025(f-1).

(f) A CSU that discharges an individual under the circumstances described in (e) of this section may not bill the individual or the individual's third-party payor for the temporary admission of the individual to the CSU, in accordance with Texas Health and Safety Code §572.0025(f-2).

§306.57. *Involuntary Admission Criteria and Intake Process.*

(a) Criteria for involuntary admission under order of emergency detention. In accordance with Texas Health and Safety Code §573.021, a CSU administrator may accept an individual for a preliminary examination who is:

(1) apprehended, and transported to the CSU by a peace officer, in accordance with Texas Health and Safety Code §573.001(a) and §573.005; or

(2) an adult who is transported to the CSU by the individual's family member or LAR in accordance with Texas Health and Safety Code §573.003.

(b) Preliminary examination under order of emergency detention. A physician must conduct an individual's preliminary examination in accordance with Texas Health and Safety Code §573.021 and as described in §306.53(d) of this division (relating to Pre-admission Screening and Assessment). The individual's preliminary examination must:

(1) occur as soon as possible, but no later than 12 hours after:

(A) the individual is apprehended by the peace officer;

or

(B) the individual's LAR transports the individual to the CSU for emergency detention; and

(2) include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to determine if the individual meets the criteria described in the emergency detention requirements listed in subsection (c) of this section.

(c) Requirements for emergency detention. When clinically indicated, a CSU physician may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code §572.004(d). A CSU physician may admit an individual for emergency detention in accordance with Texas Health and Safety Code §573.022(a)(2), only if:

(1) a physician determines from the preliminary examination that:

(A) the individual has a mental illness;

(B) the individual evidences a substantial risk of serious harm to self or others;

(C) the described risk of harm is imminent unless the individual is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) a physician makes a written statement, in accordance with Texas Health and Safety Code §573.022 that:

(A) documents the determination described in paragraph (1) of this subsection; and

(B) describes:

SED;

(ii) the specific risk of harm to self or others the individual evidences, demonstrated either by behavior or evidence of severe emotional distress;

(iii) the deterioration of mental condition to the extent that the individual cannot remain at liberty; and

(iv) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) the physician writes an order admitting the individual for emergency detention based on the determination described in paragraph (1) of this subsection; and

(4) the individual meets the CSU's admission criteria, as required by §306.51 of this division (relating to Admission Criteria).

(d) Release of an individual from emergency detention.

(1) A CSU administrator, or administrator's designee, must release an individual accepted for a preliminary examination if:

(A) a preliminary examination of the individual has not been conducted within 12 hours, in accordance with Texas Health and Safety Code §573.021; or

(B) the individual is not admitted to the CSU under order of emergency detention on completion of the preliminary examination in accordance with Texas Health and Safety Code §573.023(a).

(2) A CSU administrator, or administrator's designee, must release an individual determined ineligible for admission under emergency detention in accordance with the requirements in Texas Health and Safety Code §576.007. Before releasing an individual, the CSU must:

(A) make a reasonable effort to notify the individual's LAR, if applicable, and any other person authorized by the individual of the individual's release;

(B) document the individual's refusal of notification in the individual's medical record, if applicable; and

(C) coordinate with the individual, the individual's LAR, if applicable, or the apprehending county to arrange the individual's transportation after release, in accordance with Texas Health and Safety Code §573.024(a) - (d), to:

(i) the location of the individual's apprehension;

(ii) the individual's residence in this state; or

(iii) another suitable location identified by the individual or LAR, if applicable.

(e) Intake under Emergency Detention. A CSU staff member, trained in accordance with §306.83(h) - (i) of this subchapter (relating to Staff Training), must:

(1) conduct the intake of an individual as soon as possible, but no later than 24 hours after the time an individual is apprehended for emergency detention, as described in §306.55 of this division (relating to Voluntary Admission Criteria and Intake Process); and

(2) advise the individuals of their rights and determine whether the individual comprehends the rights for individuals apprehended, detained, or transported for emergency detention provided in accordance with Texas Health and Safety Code §573.025 and consent rights and information described in §306.51 and §306.55 of this division, and if the staff member determines that the individual:

(A) comprehends the information, the CSU must document in the individual's medical record the reasons for such determination; or

(B) does not comprehend the information, the staff member must:

(i) repeat the explanation to the individual daily within 24-hour intervals until the individual demonstrates comprehension of the information or is discharged, whichever occurs first; and

(ii) document in the individual's medical record the individual's response to each explanation and whether the individual demonstrated comprehension of the information.

(f) Criteria for involuntary admission under an order of protective custody.

(1) When clinically indicated, a CSU physician may initiate an application to request an order of protective custody of an individual in accordance with Texas Health and Safety Code §574.021.

(2) A CSU physician may admit an individual under an order of protective custody only if a court has issued a protective custody order in accordance with Texas Health and Safety Code §574.022.

(g) Intake under order of protective custody.

(1) A CSU staff member trained in accordance with §306.83(h) - (i) of this subchapter:

(A) must conduct an intake of an individual, as described in §306.55(d)(5)(A) - (D) and §306.55(d)(5)(F) of this division, as soon as possible, but no later than 24 hours after the time an individual is accepted for protective custody; and

(B) advise the individual of their rights in accordance with Texas Health and Safety Code §573.0025 and determine whether the individual comprehends the rights and consent information described in §306.51 of this division and §306.55(d)(5) of this division.

(2) If the CSU staff member determines that the individual:

(A) comprehends the information, the staff member must document in the individual's medical record the reasons for such determination; or

(B) does not comprehend the information, the staff member must:

(i) repeat the explanation to the individual daily until the individual demonstrates comprehension of the information or is discharged, whichever occurs first; and

(ii) document in the individual's medical record the individual's response to each explanation and whether the individual demonstrated comprehension of the information.

(3) A CSU staff member is not required to conduct another intake if the intake was conducted when the individual was admitted, or within 24 hours before the issuance of the order of protective custody.

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

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TRD-202101828



### DIVISION 3. SERVICE REQUIREMENTS

#### 26 TAC §§306.61, 306.63, 306.65, 306.67

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

#### §306.61. Crisis Stabilization Unit Medical Services.

(a) A CSU physician, or physician-delegated PA or APRN, must provide an individual with the medical services documented in the individual's recovery or treatment plan developed in accordance with §306.65 of this division (relating to Crisis Stabilization Services and Recovery or Treatment Planning).

(b) A CSU must have a medical director who directs, monitors, and evaluates the psychiatric services provided.

(c) A CSU administrator, or administrator's designee, must assign a treating physician to each individual and document the assignment in the individual's medical record at the time the CSU administrator, or administrator's designee, admits the individual.

(d) A physician, PA, APRN, or RN must perform an individual's initial physical health assessment within 24 hours after the individual's presentation, as ordered. The physical assessment includes:

(1) an evaluation and documentation of the presence or absence of cognitive signs suggesting delirium and the need for emergency intervention;

(2) a general medical history that addresses conditions that may affect the individual's current condition, including a review of symptoms focused on conditions (such as a history of trauma) that may present with psychiatric symptoms or cause cognitive impairment;

(3) a review of medical conditions that may cause similar psychiatric symptoms or complicate the individual's condition; and

(4) access to phlebotomy and laboratory results.

(e) A physician must conduct an initial psychiatric evaluation of an individual, including:

(1) a description of the individual's medical history;

(2) a determination of the individual's mental status;

(3) a description of the presenting problems, the onset, and the duration and severity of mental health or substance use disorder symptoms leading to CSU admission;

(4) an estimation of the individual's intellectual functioning, memory functioning and orientation;

(5) a description of the individual's strengths and needs; and

(6) the diagnoses of the individual's mental illness, SED, and if applicable, any substance use disorders, ID, or DD.

(f) A physician, or physician-delegated PA or APRN, must re-evaluate the individual once every 96 hours or more often as clinically indicated after the initial examination described in subsection (e) of this section. This re-evaluation information may be included in the physician's, APRN's, or PA's discharge summary if the individual is discharged within the initial 96-hour period, as described in §306.71(b) of this subchapter (relating to Discharge Planning).

(g) A CSU medical director must ensure, as appropriate under the circumstances:

(1) the provision of medical services to an individual in response to an emergency medical condition in accordance with the plan required by §306.89 of this subchapter (relating to Crisis Stabilization Unit Response to an Emergency Medical Condition);

(2) the provision of other medical services, as needed by the individual;

(3) the referral of the individual to an appropriate health care provider; or

(4) the transfer of the individual to a health care entity that can provide the medical services.

(h) At least one physician, or physician-delegated PA or APRN, must be available 24 hours a day, 365 days a year, either in person or by telecommunication, to provide medical consultation to staff members in accordance with §306.85 of this subchapter (relating to Minimum Staffing Requirements).

#### §306.67. Additional Standards of Care for Children and Adolescents.

(a) In addition to the service requirements in this division, a child or adolescent must receive additional assessments, including a developmental assessment and history of trauma assessment, performed by an LPHA with appropriate training and experience in the assessment and treatment of children in a crisis setting. The assessments must:

(1) be administered in person or through telehealth or telemedicine medical services; and

(2) include the individual's parents, LAR, or adult caregiver, as applicable and as clinically appropriate according to the child's or adolescent's age, functioning, and current living situation.

(b) Services delivered to a child or an adolescent must be:

(1) age-appropriate;

(2) developmentally appropriate;

(3) trauma-informed; and

(4) consistent with the child's or adolescent's academic development.

(c) Children must be separated from adolescents, based on age and developmental needs, unless there is clinical or developmental justification in the child or adolescent's medical record. Both children and adolescents must be separated from adults, required in §306.87(d) of this subchapter (relating to Protection of an Individual Receiving Crisis Stabilization Unit Services).

(d) Education services must be available as required by the Texas Education Agency.

(e) When a child or adolescent surpasses the maximum age for their current unit or CSU, the unit or CSU administrator, or adminis-

trator's designee, must transition the child or adolescent to a different age-appropriate unit or CSU.

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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For further information, please call: (512) 838-4346



## DIVISION 4. DISCHARGE

### 26 TAC §§306.71, 306.73, 306.75, 306.77, 306.79

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

#### §306.71. *Discharge Planning.*

(a) A QMHP-CS or LPHA must begin discharge planning for an individual at the time of the individual's admission.

(1) Discharge planning must involve the individual, the IDT, the individual's LAR or adult caregiver, as applicable, and any other person authorized by the individual and the individual's adult caregiver or LAR if applicable, unless clinically contraindicated.

(2) Discharge planning must be provided in accordance with §510.41(m)(3) of this title (relating to Facility Functions and Services) and include:

(A) the IDT recommendations for services and supports, including placement needs, that should be provided after discharge;

(B) the IDT arrangements for the recommended services and supports;

(C) a PASRR screening, as required by paragraph (3) of this subsection; and

(D) the IDT post-discharge care information provided in a language and format easily understandable to the individual, and the individual's LAR or adult caregiver, if applicable.

(3) An individual considered for discharge from the CSU to a Medicaid-certified nursing facility must have a PASRR Level I screening completed, in accordance with the Code of Federal Regulations, Title 42, Part 483, Subpart B (relating to Requirements for Long-Term Care Facilities) before discharge; and

(4) if the screening indicates that the individual has a mental illness, ID, or DD, the CSU staff member coordinating the

individual's transfer must contact and arrange for the designated LMHA, LBHA, or LIDDA to conduct a PASRR Level II evaluation of the individual before CSU discharge, in accordance with Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(b) The individual's treating physician must prepare a written discharge summary that includes:

(1) a description of the individual's treatment at the CSU and the response to that treatment;

(2) a description of the individual's condition at discharge;

(3) a description of the individual's placement after discharge;

(4) a description of the services and supports the individual will receive after discharge;

(5) a final diagnosis based on the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*;

(6) a description, including dosage instructions, of the prescribed medications the individual will need until the individual is evaluated by a physician, or provider with prescriptive authority; and

(7) the name of the person or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the CSU.

(c) The CSU staff member coordinating the individual's discharge must provide a copy of the discharge summary as authorized by state and federal law, to LMHA, LBHA, LIDDA, or other community providers and consult with them to ensure continuity of care for the individual upon discharge from the CSU.

(d) The CSU staff member coordinating the individual's discharge must contact and coordinate with the individual's existing service providers and in accordance with the Health Insurance Portability and Accountability Act or other law prior to the individual's discharge.

(e) If the individual, or the individual's LAR, adult caregiver, or others authorized by the individual, refuse to participate in the discharge planning, the CSU staff member coordinating the individual's discharge must document the circumstances of the refusal in the individual's medical record.

(f) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the presiding judge or magistrate of a court that has jurisdiction over proceedings brought in accordance with Texas Health and Safety Code Chapter 574 to extend the period during which the individual may be detained in accordance with Texas Health and Safety Code §572.004(e).

#### §306.73. *Discharge Notices.*

(a) The CSU staff member coordinating the individual's discharge must notify the parent, LAR, or adult caregiver of the pending discharge of a child or adolescent, unless clinically contraindicated, in accordance with §568.82(b) of this title (relating to Discharge Notices and Release of Minors). If the treatment team believes notifying the individual's parent, LAR, or adult caregiver is clinically contraindicated, CSU staff must notify Texas Department of Family Protective Services.

(b) In accordance with Texas Health and Safety Code §576.007, before discharging any adult, the CSU staff member coordinating the individual's discharge must make a reasonable effort to notify the individual's LAR, adult caregiver, and others authorized by the individual and LAR or adult caregiver, of the discharge if the individual, LAR, or adult caregiver grants permission for the notification.

(c) Upon discharge, the CSU staff member coordinating the individual's discharge must provide the individual with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services) and required by Texas Health and Safety Code §576.008.

§306.75. *Discharge of a Voluntarily-Admitted Individual.*

(a) In accordance with 25 TAC Chapter 404, Subchapter E, all individuals voluntarily admitted to a CSU for treatment of mental illness or SED have the right to be discharged within four hours of a request for release unless the individual's treating physician, (or another physician, if the treating physician, is not available) determines that there is cause to believe the individual might meet the criteria for emergency detention.

(b) When a CSU staff member is informed that a voluntarily-admitted individual wants to leave the CSU, or the individual's LAR or adult caregiver requests the individual be discharged, the CSU staff member must, in accordance with Texas Health and Safety Code §572.004 and 25 TAC Chapter 404, Subchapter E:

(1) inform the individual, and the individual's LAR or adult caregiver, if applicable, that the request must be in writing and signed, timed, and dated by the requestor; if the request for discharge is verbal, then the four hours begins at the time of a verbal request and must be documented in the medical record. Inform the individual or the individual's LAR of the potential four-hour delay from the time of the verbal request;

(2) assist the individual as soon as possible, with documenting the verbal request for discharge or creating a written request for discharge and presenting the request to the individual for the individual's signature; and

(3) inform the LAR or adult caregiver to submit written approval to the CSU administrator, or administrator's designee, for the CSU treating physician to discharge an individual younger than 18 years of age if the LAR or adult caregiver signed for the individual's admission to the CSU.

(c) If a voluntarily-admitted individual, or the individual's LAR or adult caregiver, if applicable, submits a verbal or written request for discharge from a CSU, the CSU staff member must:

(1) immediately notify the treating physician, or another CSU physician if the treating physician is not available, of the request after the request becomes known to the CSU; and

(2) file the request in the individual's medical record.

(d) If the physician, notified in subsection (b) of this section, and in accordance with Texas Health and Safety Code §572.004, does not have reasonable cause to believe that the individual may meet the criteria for court-ordered inpatient mental health services or emergency detention, the treating physician must discharge the individual within the four-hour time frame described in subsection (b) of this section.

(e) If the physician, notified in subsection (b) of this section, and in accordance with Texas Health and Safety Code §572.004, has reasonable cause to believe that the individual may meet criteria for court-ordered inpatient mental health services or emergency detention, the physician must examine the individual as soon as possible, but no later than 24 hours after the individual requests discharge from the CSU.

(1) If the physician conducting the examination described in this subsection determines that the individual does not meet criteria

for court-ordered inpatient mental health services or emergency detention, the treating physician must discharge the individual upon completion of the examination.

(2) If a physician does not examine an individual for involuntary treatment criteria within 24 hours after the individual requests CSU discharge, the treating physician must discharge the individual even if the physician believes the individual may meet criteria for court-ordered inpatient mental health services or emergency services.

(f) If the physician conducting the examination described in subsection (e) of this section determines that the voluntarily-admitted individual meets the criteria for court-ordered inpatient mental health services or emergency detention, a CSU physician must, by 4:00 p.m. on the next business day, in accordance with Texas Health and Safety Code §572.004:

(1) file an application for court-ordered inpatient mental health services or emergency detention within 24 hours after the individual requests discharge from the CSU, and obtain a court order for further detention of the individual; or

(2) discharge the individual.

(g) If the CSU treating physician intends to detain a voluntarily-admitted individual and file an application to obtain a court order for further detention of the individual, a physician must in accordance with Texas Health and Safety Code §572.004:

(1) notify the individual of such intention; and

(2) document the reasons for the decision to detain the individual in the individual's medical record.

(h) A CSU treating physician is not required, in accordance with Texas Health and Safety Code §572.004, to complete the discharge process described in this section if the voluntarily-admitted individual makes a written statement to withdraw the request for discharge.

§306.77. *Maximum Length of Stay for a Voluntarily-Admitted Individual.*

Except as allowed by paragraph (3) of this section, a CSU physician must discharge a voluntarily-admitted individual on the 14th day after the individual's admission, unless:

(1) the individual's treating physician orders the individual's discharge before the 14th day;

(2) the individual's treating physician orders the individual's transfer to other treatment or services, in accordance with §306.91 of this subchapter (relating to Transfers);

(3) a physician, or physician-delegated PA or APRN, documents in the individual's medical record the medical necessity and clinical rationale for extending the length of stay beyond 14 days; or

(4) an individual under 18 years of age was admitted under an order of Temporary Authorization, issued in accordance with Texas Family Code Section §35A.005(d), in which case the individual must be discharged by the tenth day after the date the order for temporary authorization is issued.

§306.79. *Discharge of an Involuntarily-Admitted Individual.*

(a) Discharge from emergency detention.

(1) Except as provided by §306.59 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code §573.021 and §573.023, an involuntarily-admitted individual under emergency detention must be immediately discharged from a CSU if:

(A) the administrator or the administrator's designee determines, based on a physician's determination, that the individual no longer meets the criteria described in subsection (b)(1) of this section; or

(B) except as provided in subsection (b) of this section, 48 hours have lapsed from the time the individual was presented to the CSU and the CSU has not obtained a court order for the individual's further detention.

(2) In accordance with Texas Health and Safety Code §573.021(b), if the 48-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the CSU, the involuntarily-admitted individual may be detained until 4:00 p.m. on such business day.

(3) In accordance with Texas Health and Safety Code §573.021(b), the 48-hour custody period described in paragraph (1)(B) of this subsection includes any time during which the individual in custody spends waiting in the CSU for medical care before receiving a preliminary examination.

(b) Discharge under protective custody order. Unless an involuntarily-admitted individual consents to voluntary treatment, a CSU physician must immediately discharge the individual under an order of protective custody if:

(1) the CSU administrator or designee determines that, based on a physician's determination, the individual no longer meets the criteria for protective custody described in Texas Health and Safety Code §574.022;

(2) the CSU administrator or designee does not receive notice that the individual's continued detention is authorized after a probable cause hearing held within the time frame prescribed by Texas Health and Safety Code §574.025;

(3) a final order for court-ordered inpatient mental health services has not been entered within the time frame prescribed by Texas Health and Safety Code §574.005; or

(4) an order to release the individual is issued in accordance with Texas Health and Safety Code §574.028.

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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Health and Human Services Commission

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## DIVISION 5. OPERATIONAL REQUIREMENTS

**26 TAC §§306.81, 306.83, 306.85, 306.87, 306.89, 306.91, 306.95**

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §534.053, which requires the Executive Commissioner of HHSC to adopt rules and standards for services provided by community centers and their subcontractors; and Texas Health and Safety Code, Chapter 577, Subchapter A, which set forth general provisions, licensing requirements and penalties, and HHSC adoption of rules and standards for CSU programs.

### §306.81. *Medical Record.*

(a) A medical record must be maintained for each individual, in accordance with §510.41(g) of this title (relating to Facility Functions and Services). The medical record must include:

(1) a signed voluntary commitment, signed order of protective custody or police officer's warrant, or a notice of detention;

(2) a signed informed consent to treatment, including medication, or documentation of the individual's refusal;

(3) documentation of the reasons the individual, LAR, family members, or other adult caregivers state the individual was admitted to the CSU;

(4) justification for each mental illness or serious emotional disturbance diagnosis and any substance use disorder diagnosis;

(5) the level of monitoring assigned and implemented for the individual, including any changes to the level of monitoring;

(6) the individual's written recovery or treatment plan;

(7) the name of the individual's treating physician;

(8) written findings of the physical examination;

(9) written findings of the psychiatric evaluation, the nursing assessment, and any other assessment of the individual conducted by a staff member, including any re-evaluation or re-assessment;

(10) a summary of any revisions made to the written recovery or treatment plan;

(11) the progress notes for the individual as described in subsection (b) of this section;

(12) documentation of the individual's monitoring by UPs, LVNs, and any assigned staff members responsible for such monitoring, including observations of the individual at pre-determined intervals;

(13) documentation of the discharge planning activities;

(14) the discharge summary; and

(15) documentation of the individual's medical, mental health, and substance use history.

(b) Progress notes are required for each individual. A physician, a physician-delegated PA or APRN, or RN and any assigned staff members providing services to an individual must document the individual's progress and response to treatment provided in the individual's recovery or treatment plan.

### §306.83. *Staff Training.*

(a) In accordance with §301.331 of this title (relating to Competency and Credentialing), a CSU administrator, or administrator's designee, must:

(1) ensure that services are provided by staff members who are operating within their scope of their license, credentialing, job description, or contract specification, and in accordance with applicable

state law and rule, including 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services);

(2) define competency-based expectations for each CSU staff position and ensure each staff member receives initial training before the staff member assumes responsibilities required by the CSU and annually throughout the staff member's employment with the CSU; and

(3) require all staff members to demonstrate required competencies delineated in §301.331(a)(3)(A) of this title, including:

(A) identifying, preventing, and reporting abuse, exploitation, and neglect of individuals and unprofessional or unethical conduct, in accordance with 25 TAC §417.515 (relating to Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation);

(B) an individual's dignity and rights, in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services); and

(C) protection of an individual's confidential information, in accordance with relevant state and federal laws, including 42 Code of Federal Regulations, Part 2.

(b) All UPs and any direct care staff members providing services to an individual must receive training and instruction in the following topics and demonstrate critical competencies delineated in §301.331(a)(3)(B) of this title, before the staff member assumes responsibilities required by the CSU and annually throughout the staff member's employment with the CSU:

(1) the implementation of the interdisciplinary treatment program for each individual before performing direct care duties without direct supervision; and

(2) the specialized needs of child, adolescent, and geriatric individuals, and individuals diagnosed with an ID or DD.

(c) An RN, LVN, and UP must receive training in:

(1) monitoring for individual safety; and

(2) infection control.

(d) A CSU nursing supervisor or designee must provide orientation training to a nursing staff member when the CSU nursing supervisor initially assigns the staff member to a unit on either a temporary or long-term basis.

(1) The orientation must include a review of:

(A) the location of equipment and supplies on the unit;

(B) the staff member's responsibilities on the unit;

(C) relevant information about individuals on the unit;

(D) relevant schedules of staff members and individuals;

and

(E) procedures for contacting the staff member's supervisor.

(2) A CSU administrator, or administrator's designee, must document the provision of orientation to nursing staff.

(e) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric individual must receive training in the social, psychological, and physiological changes associated with aging.

(f) A QMHP-CS or LPHA whose responsibilities include specialized services and tasks, including screening and assessment, must receive training in, and display specialty competencies for, tasks delin-

ated in §301.331(a)(3)(C) of this title, before providing services for individuals and annually throughout the QMHP-CS's employment or association with the CSU.

(g) QMHP-CS and LPHA training must include instruction, including:

(1) age and developmentally appropriate clinical assessment, intervention, and engagement techniques;

(2) use of telemedicine equipment;

(3) developing and implementing an individualized treatment or recovery plan;

(4) developing and implementing an individualized discharge plan and referring an individual to local community resources;

(5) appropriate actions to take in a crisis; and

(6) clinical specialties directly related to the services to be performed.

(h) In accordance with Texas Health and Safety Code §572.0025(e), any staff member whose responsibilities include conducting an individual's intake must receive at least eight hours of intake training:

(1) before conducting an intake; and

(2) annually throughout the staff member's employment or association with the CSU.

(i) For any staff member whose responsibilities include conducting an individual's intake, intake training must include instruction regarding:

(1) obtaining relevant information about the individual, including information about finances, insurance benefits, and advance directives;

(2) explaining, orally and in writing, the individual's rights;

(3) explaining, orally and in writing, the CSU's services and treatment as they relate to the individual;

(4) informing the individual in writing, of the existence, telephone number, and address of the protection and advocacy system established in Texas;

(5) informing the individual about the availability of information and assistance from the Ombudsman by contacting the Ombudsman at 1-800-252-8154 or online at [hhs.texas.gov/ombudsman](http://hhs.texas.gov/ombudsman), and the Health Facility Licensing complaints line at 1-888-973-0022; and

(6) determining whether the individual comprehends the information provided in accordance with paragraphs (2) - (5) of this subsection.

(j) A staff member who may initiate a restraint or seclusion must receive training in, and demonstrate competency in, performing such interventions in accordance with applicable law and rule, including 25 TAC §415.260 (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency), use of de-escalation techniques, and reporting requirements.

(k) A staff member providing direct care must earn and maintain certification in Basic Life Support provided by the American Heart Association or the American Red Cross:

(1) before assuming responsibilities at the CSU; or

(2) no later than 30 days after the staff member is hired by the CSU if another staff member who has such certification is phys-

ically present and on duty on the same unit on which the uncertified staff member is on duty.

(l) A CSU administrator, or administrator's designee must:

(1) document when a staff member has successfully completed a training required by this section, including:

- (A) the date of the training;
- (B) the length of the training session; and
- (C) the name of the instructor.

(2) Maintain certification or other evidence issued by the American Heart Association or the American Red Cross that a staff member has successfully completed the training in Basic Life Support.

(m) A staff member must perform in accordance with required training and the staff member's credentials.

*§306.85. Minimum Staffing Requirements.*

(a) A CSU nursing supervisor, or designee, must adhere to nurse staffing requirements delineated in §510.41(c)(8) and (j) of this title (relating to Facility Functioning and Services) and the following parameters when determining minimum staffing plans required by subsections (b) - (d) of this section.

(1) Staff included in the minimum staffing plan must:

- (A) always be physically available while on duty; and
- (B) have job duties that do not prevent ongoing and consistent supervision of individuals receiving crisis stabilization services.

(2) The minimum staffing plan must increase or decrease based on CSU census and acuity, individual level of monitoring and precautions, and developmental level, gender, age, and other individual needs and characteristics of individuals receiving crisis stabilization services.

(3) A staff member on one-to-one supervision of an individual cannot be included in the CSU's minimum staffing plan.

(b) The minimum staffing plan includes:

(1) one physician, preferably a psychiatrist, or physician-delegated PA or APRN, onsite or at minimum immediately available through telecommunication or telephone 24 hours a day, seven days a week;

(2) one LVN or one RN physically present and on duty 24 hours a day, seven days a week, when an individual is present in the CSU;

(3) one RN available onsite within ten minutes after being contacted by a staff member, if an RN is not physically present and on duty when an individual is in the CSU;

(4) one QMHP-CS onsite from 8:00 a.m. to 5:00 p.m., Monday through Friday; and

(5) two UPs onsite 24 hours a day, seven days a week.

(c) A nursing supervisor or an RN charge nurse receiving clinical and administrative consultation from the facility administrator and medical director or on-call physician, APRN, or PA must be available, in person or by telephone, 24 hours a day, seven days a week, to provide clinical oversight to CSU RNs, LVNs, QMHP-CSs, and UPs.

(d) The nursing supervisor or designee must develop and implement a written staffing plan describing the number of RNs, LVNs, and UPs on each unit for each shift, in accordance with subsections (a) and (b) of this section, that meet the following requirements:

(1) The staffing plan must be based on the census, needs, and characteristics of individuals, and acuity of the CSU.

(2) The nursing supervisor or designee must document the nursing supervisor's or designee's determinations regarding the factors described in paragraph (1) of this subsection:

(A) at the time the staffing plan is developed; and

(B) when the nursing supervisor or designee makes any revisions to the staffing plan based on a change in such factors.

(3) A CSU nursing supervisor must retain the staffing plan and the documentation required by paragraph (2) of this subsection for two years.

(4) The nursing supervisor or designee must revise the staffing plan, as necessary.

*§306.87. Protection of an Individual Receiving Crisis Stabilization Unit Services.*

(a) At the time an individual is admitted, a CSU nursing supervisor or designee must implement the level of monitoring ordered by the physician, or physician-delegated PA or APRN, based on the individual's needs and in accordance with this section, 25 TAC §415.260 (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency), and §415.266 (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

(b) All CSU staff must contribute to the protection of individual's by:

(1) modifying the CSU environment based on the individual's needs, including:

(A) providing furnishings that do not present safety hazards to the individual;

(B) securing or removing objects that are hazardous to the individual;

(C) installing any necessary safety devices; and

(D) making roommate assignments and other decisions affecting the interaction of the individual with other individuals, based on individual needs and vulnerabilities;

(2) monitoring the individual in accordance with the physician's, or physician-delegated PA's or APRN's, order and CSU written policies and procedures; and

(3) documenting the individual's level of monitoring ordered by the physician, or physician-delegated PA or APRN, in the individual's medical record.

(c) A CSU medical director must ensure:

(1) each level of monitoring is defined in the CSU's policies and procedures, including a description of the responsibilities of staff members for each level of monitoring identified; and

(2) implementation of the level of monitoring ordered by the physician, or physician-delegated PA or APRN, based on the individual's needs.

(d) In accordance with Texas Health and Safety Code §321.002, a CSU administrator or administrator's designee, must keep children and adolescents separate from adults.

(e) All CSU staff must maintain an individual's confidential information in accordance with the Health Insurance Portability and Accountability Act rules and 1 TAC Chapter 390, Subchapter A (relating

to Standards Relating to the Electronic Exchange of Health Information). CSU staff must:

(1) be knowledgeable of and obey all current state and federal laws and regulations relating to confidential information regarding the provision of services; and

(2) not disclose confidential information without the express written consent of the individual, and individual's LAR or adult caregiver, if applicable, except as permitted by the Health Insurance Portability and Accountability Act or other law.

(f) Qualified CSU staff must adhere to transportation requirements provided in accordance with 25 TAC §404.156 (relating to Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities) and Texas Health and Safety Code §574.045 and §574.0455 if the CSU provides transportation.

§306.91. *Transfers.*

(a) A CSU administrator, or administrator's designee, must facilitate an individual's transfer as soon as possible to an appropriate and available inpatient mental health facility, which may include contacting law enforcement to transfer an individual under an emergency detention who has not yet been admitted or obtaining permission from the court that issued the order of protective custody to transfer the individual, as appropriate, if:

(1) a physician, or physician-delegated PA or APRN, determines the individual is at serious risk of harm to self or others in the CSU and the CSU is unable to provide an adequate assurance of safety for the individuals or others in the CSU;

(2) during a 24-hour period, the individual is placed in:

(A) seclusion more than twice or for more than a total of four hours; or

(B) a restraint for more than 60 consecutive minutes; or

(3) the individual becomes the subject of:

(A) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034; or

(B) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035.

(b) A CSU administrator, or administrator's designee, must immediately facilitate an individual's transfer to a general hospital or another health care entity, as appropriate, if the individual:

(1) requires specialized care not available at the CSU; or

(2) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

(c) An administrator of a CSU solely serving children and adolescents must immediately facilitate an individual's transfer to an inpatient mental health facility serving adults when the individual:

(1) turns 18 years of age; and

(2) does not meet criteria for discharge from CSU treatment services.

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 May 7, 2021.

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## CHAPTER 568. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS

The Texas Health and Human Services Commission (HHSC) adopts new Texas Administrative Code (TAC) Title 26, Chapter 568, concerning Standards of Care and Treatment in Psychiatric Hospitals. The new chapter comprises §§568.1 - 568.5, 568.21 - 568.26, 568.41, 568.61 - 568.67, 568.81 - 568.84, 568.101, 568.121, and 568.141 - 568.144.

New §§568.3, 568.4, 568.22 - 568.24, 568.26, 568.61, 568.67, 568.81, 568.83, 568.84, 568.101, and 568.121 are adopted with changes to the proposed text as published in the January 1, 2021, issue of the *Texas Register* (46 TexReg 103). These rules will be republished.

New §§568.1, 568.2, 568.5, 568.21, 568.25, 568.41, 568.62 - 568.66, 568.82, and 568.141 - 568.144 in Title 26, Chapter 568, concerning Standards of Care and Treatment in Psychiatric Hospitals are adopted without changes to the proposed text as published in the January 1, 2021, issue of the *Texas Register* (46 TexReg 103). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Senate Bill (S.B.) 1238, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code Chapter 572, regarding Voluntary Mental Health Services, and to relocate the rules to 26 TAC. The rules in 25 TAC Chapter 411, Subchapter J are repealed and published elsewhere in this issue of the *Texas Register*. The new rules are substantially similar to the rules in Chapter 411, but updates have been made to comply with current statute, create consistent training guidelines, correct outdated citations, and update language throughout to reflect the transition to the new title.

S.B. 1238 adjusts the time frame in which a prospective voluntary mental health patient must be examined by a physician from within 72 hours before admission to either within 72 hours before admission or 24 hours after admission. The new rules allow prospective patients to be admitted to an inpatient facility before being examined by a physician. The new rules also allow a person to be discharged immediately if a physician then determines that they do not meet the clinical standards to receive inpatient mental health services.

The rules make minor updates to language throughout the rules, remove outdated citations, delete references to departments and programs that no longer exist, and reflect the transition from Title 25, Health Services, to Title 26, Health and Human Services. The rules update training requirements and citations for abuse, neglect, exploitation, and unprofessional and unethical conduct in facilities to comply with current statute and to create greater clarity regarding these guidelines.

### COMMENTS

The 31-day comment period ended February 2, 2021.

During this period, HHSC received comments regarding the proposed rules from four commenters: The Health and Safety Institute (HSI), Disability Rights Texas (DRTx), The Texas Council for Developmental Disabilities (TCDD), and Citizens Commission on Human Rights-Texas (CCHR). A summary of comments relating to the rules and HHSC's responses follows.

Comment: DRTx suggested revising the definition for adult at §568.3(4) to include "or an individual who is under 18 years of age and is or has been married or who has had the disabilities of minority removed for general purposes" in accordance with the current definition at 25 TAC §411.453(4) proposed for repeal.

Response: HHSC declines to revise the rule in response to this comment because Senate Bill 718, 83rd Legislature, Regular Session, 2013, removed these provisions from Health and Safety Code §572.001 and to maintain consistency between these rules and the standards for Crisis Stabilization Units (CSUs) in 26 TAC Chapter 306, Subchapter B.

Comment: DRTx and TCDD provided separate suggestions for revising the definition for inpatient mental health treatment at §568.3(15) to more accurately reflect who can receive residential care

Response: HHSC revised §568.3(15) in response to these comments and to reflect current industry standards.

Comment: DRTx and CCHR suggested revising the definition for legally authorized representative (LAR) at §568.3(17) to narrow the circumstances in which a person may serve as a legal authorized representative (LAR) under this chapter.

Response: HHSC revised §568.3(17) in response to these comments to limit LAR to a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

Comment: DRTx suggested adding "treatment" to the scope of matters for which an LAR is authorized to act on an individual's behalf at §568.3(17)(A).

Response: HHSC revised §568.3(17)(A) in response to this comment.

Comment: DRTx suggested revising the definition of minor at §568.3(28) to include "who is not and has not been married or who has not had the disabilities of minority removed for general purposes" in accordance with the current definition at 25 TAC §411.453(30) proposed for repeal.

Response: HHSC declines to revise the rule in response to this comment because Senate Bill 718, 83rd Legislature, Regular Session, 2013, removed these provisions from Health and Safety Code §572.001 and to maintain consistency between these rules and the standards for CSUs in 26 TAC Chapter 306, Subchapter B.

Comment: DRTx and TCDD suggested adding language to §568.4 to prohibit the use of law enforcement officers or off-duty contracted detention officers to restrain, seclude or transport or guide a person to a room or floor at the psychiatric hospital to prevent situations where a person is further detained by law enforcement after the hospital assessment or charged with an offense related to a behavioral health emergency.

Response: HHSC declines to revise the rule as suggested because doing so may limit a hospital's ability to fill necessary staff positions, which poses a health and safety risk. HHSC notes the hospital is required to train staff appropriately, including training on emergency behavioral health management. The suggested

language may also prevent hospital staff from calling 911 in an emergency that sufficiently warrants law enforcement involvement. Further, HHSC does not have authority to prohibit a peace officer from restraining, secluding or transporting or guiding a person at a hospital, and health and safety may be jeopardized if the language were to be amended as suggested.

To address the commenters' concerns, HHSC revised the rule by adding language to §568.4(g)(3) to clarify the use of law enforcement by a hospital should be limited to situations that sufficiently warrant the need for law enforcement.

Comment: DRTx, TCDD, and CCHR suggested amending §568.4(g) to require hospitals to also comply with 25 TAC Chapter 415, Subchapter A, relating to Prescribing of Psychoactive Medication.

Response: HHSC revised the rule by adding the reference to new §568.4(g)(2) and renumbering the remaining paragraphs in the subsection.

Comment: DRTx and TCDD suggested amending §568.4(h) to require hospitals to be in substantial compliance with Joint Commission standards in accordance with the language in current 25 TAC §411.454(i) proposed for repeal.

Response: HHSC declines to revise the rule in response to these comments, as adopting Joint Commission standards is not required by statute.

Comment: DRTx suggested removing the reference to Texas Health and Safety Code §572.001 at §568.22(a)(1) and replacing it with an explanation of the reference that a request for voluntary admission may be made only "by a legally authorized representative authorized by state law to consent to admission, transfer or discharge" as the TAC is a document for use by the public.

Response: HHSC declines to revise the rule in response to this comment. The reference to Texas Health and Safety Code §572.001 sufficiently clarifies who is authorized under state law to request voluntary admission.

Comment: CCHR and DRTx suggested adding language to §568.22(a) requiring a hospital to verify an individual is a prospective patient's LAR prior to accepting a request for voluntary admission by anyone other than the prospective patient.

Response: HHSC revised §568.22(a)(3) in response to these comments.

Comment: DRTx and TCDD objected to the omission of a section related to the capacity of the individual to consent to voluntary treatment in the published rules and strongly recommended that the new rules retain the language proposed for repeal at 25 TAC §411.461(b).

Response: HHSC revised the rule in response to these comments by amending §568.22 to add the suggested language in subsection (c) and renumbering the rest of the section accordingly.

Comment: CCHR and DRTx suggested adding language to §568.22(f) to allow a patient who presents voluntarily at a hospital to withdraw at any time during the exam and prohibit a hospital from preventing egress.

Response: HHSC revised the rule in response to these comments by adding new subsection §568.22(d). HHSC notes the new subsection is consistent with the language in the CSU standards in 26 TAC §306.53(a)(2).

Comment: DRTx suggested adding language to §568.23(c)(2)(A) to include the requirement that "the written statement required by the physician documentation must state that the prospective patient meets the requirements listed under (C)(1)(A - D)."

Response: HHSC declines to revise the rule in response to this comment as the suggestion is a matter of stylistic preference. The current language in §568.23(c)(2)(A) includes documentation of the requirements in §568.23(c)(1)(A)-(D) as the commenter requested.

Comment: DRTx suggested amending the age requirement in §568.23(d)(3) and §568.23(d)(4) to "younger than 18 years of age" instead of younger than 16 years of age.

Response: HHSC revised §568.23(d)(3)-(4) in response to this comment, because the revision is consistent with this chapter's definitions for minor and adult and other age requirements in this chapter.

Comment: CCHR and DRTx suggested amending §568.23(e)(1)(B) to require a hospital to inform the patient's LAR of the patient's rights.

Response: HHSC agrees a patient's LAR should also be informed of the patient's rights when applicable and revised §568.23(e)(1)(B) in response to these comments.

Comment: DRTx and CCHR suggested adding language to §568.24 to prohibit a hospital from admitting a minor who is not under CPS managing conservatorship under §568.24 unless an order for placement issued in accordance with Texas Family Code Chapter 35 or 55 is presented.

Response: HHSC declines to revise the rule in response to these comments, as the requirement for an order under Texas Family Code Chapter 55 is already included in §568.24(a)(4). HHSC notes Texas Family Code Chapters 35 and 35A are not applicable to this section, as orders under Family Code Chapter 35A do not order mental health services.

Comment: DRTx and CCHR suggested adding language to §568.24(b)(1)(B) requiring a hospital to also inform the LAR of an individual determined to be appropriate for detention after preliminary examination of the individual's rights.

Response: HHSC agrees an individual's LAR should also be informed of the patient's rights when applicable and revised §568.24(b)(1)(B) in response to these comments.

Comment: DRTx suggested adding language to §568.25 to prohibit a psychiatric hospital "from using an off-duty law enforcement officer to assist with monitoring an individual upon admission."

Response: HHSC declines to revise the rule as suggested. HHSC addresses the commenter's concern in the revision to §568.4(g)(3) and its response to comments on that rule.

Comment: DRTx suggested adding language to §568.26 to clarify the requirement that an individual must have the capacity to consent to voluntary treatment by revising the language at §568.26 to include "If a patient does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician, then the hospital may not admit the prospective patient on a voluntary basis. When appropriate, the hospital may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code, Chapter 573, or file an application for court-ordered inpatient mental health ser-

VICES in accordance with Texas Health and Safety Code, Chapter 574."

Response: HHSC declines to revise the rule as suggested. HHSC addresses the commenter's recommendation with the addition of new language regarding capacity to consent in §568.22(c), and such language does not need to be restated in §568.26.

Comment: DRTx and TCDD suggested adding language to §568.41 to clarify that law enforcement should not be used to transport a patient in a medical emergency.

Response: HHSC declines to revise the rules as suggested. HHSC addresses the commenter's concern in the revision to §568.4(g)(3) and its response to comments on that rule.

Comment: DRTx and TCDD suggested amending §568.61(a) to require a hospital to provide mental health treatment in accordance with the highest standards accepted in medical practice.

Response: HHSC agrees and revised §568.61(a) in response to these comments. HHSC notes the new language is consistent with the language in Health and Safety Code §576.022.

Comment: DRTx and TCDD suggested amending §568.61(b) to include the patient's LAR in treatment planning.

Response: HHSC agrees a patient's LAR needs to be included in treatment planning when applicable and revised §568.61(b) in response to these comments.

Comment: DRTx and TCDD suggested adding neurodevelopmental disorders to the lists of diagnoses that will also be treated during the patient's stay at a hospital under §568.61(b)(2)(A). DRTx recommended the term "neuro-developmental disorders" and TCDD recommended the term "any neurodevelopmental disorder" be used.

Response: HHSC agrees neurodevelopmental disorders must be addressed by a treatment plan and revised the rule in response to these comments by adding "neurodevelopmental disorders" to new §568.61(b)(2)(A)(iii). HHSC also recognizes the need to ensure a treatment plan addresses all non-psychiatric conditions with which an individual may be diagnosed, and therefore also added clarification to §568.61(b)(2)(A)(iv) in response to these comments.

Comment: DRTx and TCDD suggested revising the language in §568.61(d) to specify a timeframe for treatment plan reviews, specifically that the treatment plan be reviewed "at least monthly."

Response: HHSC declines to revise the rule in response to these comments in order to maintain consistency between HHSC's rule sets for inpatient mental health facilities. The state hospital rules do not include a timeframe for treatment plan reviews. HHSC notes that §568.61(d)(3) requires a treatment plan review be conducted upon request by a patient or a patient's LAR.

Comment: DRTx and TCDD suggested adding new language to §568.61(d) requiring documentation of the patient and LAR's response to the treatment plan.

Response: HHSC declines to revise the rule in response to these comments. This documentation is already required under §568.61(f).

Comment: DRTx and TCDD suggested revising the language in §568.67(a)(1) to require modification of the hospital environment

"to accommodate the patient's needs" instead of "based on a patient's needs."

Response: HHSC declines to revise the rule in response to these comments. This requirement relates to addressing safety concerns in the hospital environment and the suggested language may make it more difficult for HHSC to enforce compliance with this requirement. HHSC also notes the proposed rule is substantially similar to the CSU standards in 26 TAC Chapter 306.

Comment: DRTx and TCDD suggested adding language to §568.67(b) requiring documentation if a hospital enhances a patient's level of monitoring.

Response: HHSC revised the rule in response to these comments by adding §568.67(b)(3) with language similar to that requested by the commenters and revised §568.67(b)(1)-(2) accordingly.

Comment: DRTx and TCDD suggested amending §568.67(c) to add language requiring further separation of pre-teenagers from teenagers.

Response: HHSC agrees there is a need for hospitals to further separate children from adolescents and revises the rule in response to these comments. HHSC revised §568.67(c) to require providers delivering mental health community services in group settings to separate adults from children and adolescents, and require adolescents be further separated from children according to age and developmental needs, unless there is a clinical or development justification. HHSC also notes this language is used in the CSU standards in 26 TAC Chapter 306.

Comment: DRTx and TCDD suggested adding language to §568.81(a)(1)-(2) to include a patient's LAR and adding language in accordance with S.B. 362, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code §574.091 to require the local mental health authority (LMHA) or local behavioral health authority (LBHA) to be notified of a patient's release and participate in the patient's discharge planning if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA/LBHA.

Response: HHSC revised §568.81(a)(1)-(2) in response to these comments and in accordance with S.B. 362.

Comment: DRTx and TCDD suggested adding language to §568.81(a)(4) to clarify what entity is responsible for meeting specific patient needs in the discharge plan.

Response: HHSC revised §568.81(a)(4) in response to these comments. HHSC notes the new language is consistent with the language in 26 TAC §306.21.

Comment: DRTx and CHHR suggested clarifying the discharge process when requested by a minor's parent in §568.83(a) by adding the following language: "If a hospital is informed by a parent who has consented to voluntary admission of their ward, that they desire or request their ward leave the hospital, the hospital shall immediately discharge the ward into the parent's custody."

The commenters also suggested amending the language in this section by adding a new subparagraph related to the discharge of an adult or minor in the conservatorship of the state as follows: "If a hospital is informed that an adult or minor in the conservatorship of the State who is voluntarily admitted desires or requests to leave the hospital, the hospital shall, in accordance with Texas Health and Safety Code §572.004."

Response: HHSC declines to revise the rule in response to these comments as releasing a minor patient "immediately into the parent's custody" upon a request of discharge by a parent is prohibited by statute. Health and Safety Code §572.004 requires an examination by a physician to allow for consideration of whether an individual may require court-ordered inpatient care. This requirement under Health and Safety Code §572.004 includes a minor, as a minor may be subject to an emergency detention order or order under Family Code Chapter 55. Regarding commenters' second point, the current language applies to all voluntary patients and therefore this distinction is unnecessary.

Comment: DRTx suggested replacing the proposed language in §568.84(f) with the language in §568.81(a)(2) to clarify the interdisciplinary team must include the patient's LAR and "LMHA/LBHA if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA/LBHA."

Response: HHSC revised §568.84(f) in response to this comment.

Comment: CCHR expressed concern that the language in §568.101(a) is not sufficient to ensure regulators and former patients are able to request the information necessary to understand what occurred in the hospital and that the proposed language may omit certain elements of a medical record including estimate of charges in accordance with Health and Safety Code §164.009; medication consent in accordance with Health and Safety Code §576.025; medication administration records; and evidence that the patient or LAR received a copy of the patients' rights booklet, and that it was explained orally or by other means calculated to communicate these rights to a patient in accordance with Health and Safety Code §321.002.(g)(2). The commenter also requested this section reflect the CMS special medical record requirements for psychiatric hospitals at 42 CFR §482.61.

Response: HHSC revised the rule in response to this comment by adding paragraphs (15)-(18) to §568.101(a).

Comment: DRTx and TCDD suggested adding language to §568.121(a)(1) to require staff training under this section be competency-based.

Response: HHSC revised §568.121(a) in response to these comments. HHSC notes that this section now aligns with the CSU standards in 26 TAC Chapter 306.

Comment: HSI requested adding HSI as a first aid and cardiopulmonary resuscitation training provider in §568.121.

Response: HHSC revised §568.121(b) and §568.121(e)(2) in response to this comment and to be consistent with other HHSC rule sets.

Minor editorial changes were made to §§568.3, 568.4, 568.22, 568.26, 568.83, and 568.121 to update rule references resulting from revisions to the proposed rule based on comments received.

HHSC made editorial changes in §§568.81(a)(3), 568.81(c), and 568.83(a)-(b) by adding the term "when applicable" for clarity and combined paragraph (1) to subsection (h) of §568.83 to comply with rule formatting. The word "subsection" is deleted in §568.84(a)(1)(A) because it is not necessary.

## SUBCHAPTER A. GENERAL REQUIREMENTS

## 26 TAC §§568.1 - 568.5

### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 572 and Chapter 161.

#### §568.3. Definitions.

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

(1) Administrator--The individual, appointed by a governing body, who has authority to represent the hospital and, as delegated by the governing body, has responsibility for operating the hospital in accordance with the hospital's written policies and procedures.

(2) Administrator's designee--An individual designated in a hospital's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission--The acceptance of an individual to a hospital's custody and care for inpatient mental health treatment based on:

(A) a physician's order issued in accordance with §568.22(f)(2)(B) of this chapter (relating to Voluntary Admission);

(B) a physician's order issued in accordance with §568.23(c)(3) of this chapter (relating to Emergency Detention);

(C) an order of protective custody issued in accordance with Texas Health and Safety Code §574.022;

(D) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034;

(E) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035;

(F) an order for commitment issued in accordance with Texas Code of Criminal Procedure Chapters 46B or 46C; or

(G) an order for placement in accordance with Texas Family Code Chapter 55.

(4) Adult--An individual 18 years of age.

(5) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(6) CFR--The Code of Federal Regulations.

(7) Day--Calendar day.

(8) Discharge--The release by a hospital of a patient from the custody and care of the hospital.

(9) DSM--The current edition of the *Diagnostic Statistical Manual of Mental Disorders* published by the American Psychiatric Association.

(10) Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance use disorder) such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) or others in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(11) Governing body--The governing authority of a hospital that is responsible for the hospital's organization, management, control and operation, including appointment of the administrator.

(12) HHSC--The Texas Health and Human Services Commission.

(13) Hospital--

(A) A private psychiatric hospital licensed under Texas Health and Safety Code Chapter 577 (relating to Private Mental Hospitals and Other Mental Health Facilities) and Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units); or

(B) an identifiable inpatient mental health services unit in a hospital licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals) and 25 TAC Chapter 133 (relating to Hospital Licensing).

(14) Interdisciplinary treatment team (IDT)--A group of individuals who possess the knowledge, skills and expertise to develop and implement a patient's treatment plan and includes:

(A) the patient's treating physician;

(B) the patient and the patient's legally authorized representative (LAR), if any;

(C) the staff members identified in the treatment plan as responsible for providing or ensuring the provision of each treatment in accordance with §568.61(c)(1)(E)(iii) of this chapter (relating to Inpatient Mental Health Treatment and Treatment Planning);

(D) any individual identified by the patient or the patient's LAR, unless clinically contraindicated; and

(E) other staff members as clinically appropriate.

(15) Inpatient mental health treatment--Residential care provided in a hospital for a patient with a mental illness diagnosis, which may include a co-occurring diagnosis of a substance use, neurodevelopmental disorder, or both, which includes:

(A) medical services;

(B) nursing services;

(C) social services;

(D) therapeutic activities, if ordered by the treating physician; and

(E) psychological services, if ordered by the treating physician.

(16) Involuntary patient--A patient who is receiving inpatient mental health treatment based on an admission made in accordance with:

(A) §568.23 of this chapter (relating to Emergency Detention); or

(B) §568.24 of this chapter (relating to Admission of an Individual under an Order of Protective Custody, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement).

(17) Legally authorized representative (LAR)-- A parent, guardian, or managing conservator of a minor, or the guardian of an adult authorized by law to act on behalf of an individual regarding a matter described in this subchapter regarding:

(A) admission, treatment, transfer, or discharge, including:

(i) a parent, non-Department of Family and Protective Services managing conservator or guardian of minor;

(ii) a Department of Family and Protective Service managing conservator of a minor acting pursuant to Texas Health and Safety Code §572.001(c-2)-(c-4); and

(iii) a person eligible to consent to treatment for a minor under Texas Family Code §32.001(a)(1), (2), or (3), who may request from a district court authorization under Texas Family Code Chapter 35A for the temporary admission of a minor who has been within their care for the past 6 months.

(B) consent on behalf of an individual with regard to a matter described in this subchapter other than admission, treatment, transfer, or discharge, including:

(i) persons described by subparagraph (A) of this paragraph; and

(ii) an agent acting under a Medical Power of Attorney under Texas Health and Safety Code Chapter 250 or a Declaration for Mental Health Treatment under Texas Civil Practice and Remedies Code Chapter 137.

(18) Legal holiday--A holiday listed in Texas Government Code §662.021 and an officially designated county holiday applicable to a court in which proceedings are held under the Texas Mental Health Code.

(19) Licensed marriage and family therapist--An individual who is licensed as a marriage and family therapist by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 502.

(20) Licensed master social worker--An individual who is licensed as a master social worker by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 505.

(21) Licensed professional counselor--An individual who is licensed as a professional counselor by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 503.

(22) Licensed psychologist--An individual who is licensed as a psychologist by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 501.

(23) Licensed social worker--An individual who is licensed as a social worker by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 505.

(24) Licensed vocational nurse (LVN)--An individual who is licensed as a vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(25) Mandatory overtime--The time, other than on-call time, a nursing staff member is required to work at a hospital beyond the hours or days that were scheduled for the staff member. Neither the length of the shift (whether 4, 8, 12, or 16 hours) nor the number of shifts scheduled to work per week (whether 4, 5, or 6 per week) is the determinative factor in deciding whether time is mandatory overtime.

(26) Medical services--Services provided or delegated by a physician acting within the scope of the physician's practice, as described in Texas Occupations Code Title 3, Subtitle B (the Medical Practice Act).

(27) Mental illness--An illness, disease, or condition (other than epilepsy, dementia, substance-related and addictive disorders, or intellectual disability) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(28) Minor--An individual under 18 years of age.

(29) Monitoring--One or more staff members observing a patient on a continual basis or at pre-determined intervals and intervening when necessary to protect the patient from harming self or others.

(30) Neurological screening--A screening to assess an individual's neurological functioning.

(31) Nosocomial infection--A hospital-acquired infection of a patient.

(32) Nursing services--Services provided by, assigned to an LVN by, or delegated to unlicensed assistive personnel (UAP) by an RN acting within the scope of the RN's practice, as described in Texas Occupations Code Chapter 301.

(33) Nursing staff--Staff members of a hospital who are registered nurses, licensed vocational nurses, or UAP.

(34) Occupational therapist--An individual who is licensed as an occupational therapist by the Texas Board of Occupational Therapy Examiners in accordance with Texas Occupations Code Chapter 454.

(35) Pre-admission screening professional (PASP)--A staff member whose responsibilities include conducting a pre-admission screening and who is:

(A) a physician;

(B) a physician assistant;

(C) a registered nurse;

(D) a licensed psychologist;

(E) a psychological associate;

(F) a licensed social worker;

(G) a licensed professional counselor; or

(H) a licensed marriage and family therapist.

(36) Patient--An individual who has been admitted to a hospital and has not been discharged.

(37) Physician--An individual who is licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code Chapter 155 or otherwise authorized to perform medical acts under that chapter.

(38) Physician assistant--An individual who is licensed as a physician assistant by the Texas Physician Assistant Board in accordance with Texas Occupations Code Chapter 204.

(39) Pre-admission screening--The clinical process used to gather information from a prospective patient, including a medical history, any history of substance use, and the problem for which the prospective patient is seeking treatment, to determine if a physician should conduct an admission examination.

(40) Prospective patient--An individual:

(A) for whom a request for voluntary admission has been made, in accordance with §568.22(a) of this chapter (relating to Voluntary Admission); or

(B) who has been accepted by a hospital for a preliminary examination, in accordance with §568.23(a) of this chapter (relating to Emergency Detention).

(41) Psychological associate--An individual who is licensed as a psychological associate by the Texas Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 501.

(42) Psychological services--Services provided by a psychologist or psychological associate acting within the scope of the psychologist's practice, as described in Texas Occupations Code Chapter 501.

(43) Psychologist--An individual who is licensed as a psychologist by the Texas State Behavioral Health Executive Council in accordance with Texas Occupations Code Chapter 501.

(44) Registered nurse (RN)--An individual who is licensed as an RN by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(45) Sentinel event--Any of the following occurrences:

(A) the death of a patient;

(B) the serious physical injury of a patient;

(C) the serious psychological injury of a patient; or

(D) circumstances that present the imminent risk of death, serious physical injury, or serious psychological injury of a patient.

(46) Social services--Services provided by:

(A) a licensed master social worker or licensed social worker acting within the scope of the social worker's practice, as described in Texas Occupations Code Chapter 505; or

(B) a licensed professional counselor acting within the scope of the professional counselor's practice, as described in Texas Occupations Code Chapter 503.

(47) Stabilize--To provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a hospital or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(48) Staff members--All personnel of a hospital including full-time and part-time employees, contractors, students, volunteers, and professionals granted privileges by the hospital.

(49) Substance-related disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which currently meets

the criteria for substance-related and addictive disorders as described in the DSM. May also be known as a substance use disorder, substance abuse disorder, or addictive disorder.

(50) TAC--The Texas Administrative Code.

(51) Therapeutic activity--One of the following structured activities designed to develop, restore or maintain a patient's optimal level of physical and psychosocial functioning:

(A) recreational therapy provided by a therapeutic recreation specialist;

(B) physical therapy, speech therapy, or occupational therapy, provided by a licensed staff member acting within the scope of the staff member's practice;

(C) art therapy provided by a staff member who is a Board-Certified Art Therapist;

(D) music therapy provided by a staff member who is a Board-Certified Music Therapist; or

(E) psychosocial or leisure activities provided by qualified staff members.

(52) Therapeutic recreation specialist--An individual who is certified as a therapeutic recreation specialist by the Texas Consortium for Therapeutic Recreation/Activities Certification or a certified therapeutic recreation specialist by the National Council for Therapeutic Recreation Certification.

(53) Treating physician--A physician who coordinates and oversees the implementation of a patient's treatment plan.

(54) Unit--A discrete and identifiable area of a hospital that includes patients' rooms or other patient living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(55) Unlicensed assistive personnel (UAP)--An individual, not licensed as a health care provider, who provides certain health related tasks or functions in a complementary or assistive role to a registered nurse in providing direct patient care or carrying out common nursing functions.

(56) Voluntary patient--A patient who is receiving inpatient mental health treatment based on an admission made in accordance with:

(A) §568.22 of this chapter (relating to Voluntary Admission); or

(B) §568.26 of this chapter (relating to Voluntary Treatment Following Involuntary Admission).

#### §568.4. General Provisions.

(a) Written policies and procedures. A hospital shall develop written policies and procedures that ensure compliance with this subchapter.

(b) Compliance by staff. All staff members shall comply with this subchapter and the policies and procedures of the hospital required by subsection (a) of this section.

(c) Responsibility of hospital. A hospital shall be responsible for a staff member's compliance with this subchapter and the policies and procedures required by subsection (a) of this section.

(d) Enforcement of policies and procedures. A hospital shall take appropriate measures to ensure a staff member's compliance with this subchapter and the policies and procedures required by subsection (a) of this section.

(e) Implementation of physician orders. A hospital shall implement all orders issued by a physician for a patient or provide adequate written justification for failing to implement the orders.

(f) Physician delegation. Except as provided by §568.22(h)(3) of this chapter (relating to Voluntary Admission), or other state law as applicable, a physician may delegate any medical service described in this subchapter in accordance with Texas Occupations Code §157.001.

(g) Compliance with rules. A hospital shall comply with the following HHSC rules:

(1) 25 TAC Chapter 405, Subchapter E (relating to Electroconvulsive Therapy (ECT));

(2) 25 TAC Chapter 415, Subchapter A (relating to Prescribing of Psychoactive Medication);

(3) 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services) however, this does not prohibit the use of law enforcement in a situation that sufficiently warrants the need for law enforcement assistance, including to regain safety in the hospital;

(4) 25 TAC Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication-Mental Health Services); and

(5) 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services).

(h) Compliance with Treatment Facilities Marketing Practices Act. Unless it is exempt, a hospital shall comply with Texas Health and Safety Code Chapter 164 (relating to Treatment Facilities Marketing and Admission Practices).

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

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## SUBCHAPTER B. ADMISSION

### 26 TAC §§568.21 - 568.26

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 572 and Chapter 161.

§568.22. *Voluntary Admission.*

(a) A request for voluntary admission:

(1) may be made only by a person authorized to do so under Texas Health and Safety Code §572.001;

(2) must be in writing and signed by the individual making the request; and

(3) must include a statement that the individual making the request:

(A) certifies that the individual is legally authorized to act on the prospective patient's behalf;

(B) has provided the facility with documentation demonstrating that the individual is legally authorized to act on the prospective patient's behalf;

(C) agrees that the prospective patient will remain in the hospital until discharged; and

(D) consents to diagnosis, observation, care and treatment of the prospective patient until the earlier of:

(i) the discharge of the prospective patient; or

(ii) the prospective patient is entitled to leave the hospital, in accordance with Texas Health and Safety Code §572.004, after a request for discharge is made.

(b) The consent given under subsection (a)(3)(D) of this section does not waive any rights a patient has under any statute or rule.

(c) Capacity to consent. If a prospective patient does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician, then the hospital may not admit the prospective patient on a voluntary basis. When appropriate, the hospital may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code Chapter 573 or file an application for court-ordered inpatient mental health services in accordance with Texas Health and Safety Code Chapter 574.

(d) An individual who voluntarily presents to the hospital may leave the hospital at any time during the pre-admission screening and assessment process prior to their admission.

(e) Pre-admission screening.

(1) Before voluntary admission of a prospective patient, pre-admission screening personnel (PASP) shall conduct a pre-admission screening of the prospective patient.

(2) If the PASP determines that the prospective patient does not need an admission examination, the hospital may not admit the prospective patient and shall refer the prospective patient to alternative services. If the PASP determines the prospective patient needs an admission examination, a physician shall conduct an admission examination of the prospective patient.

(3) If the pre-admission screening is conducted by a physician, the physician may conduct the pre-admission screening as part of the admission examination referenced in subsection (f)(2)(A) of this section.

(f) Requirements for voluntary admission. A hospital may voluntarily admit a prospective patient only if:

(1) a request for admission is made in accordance with subsection (a) of this section;

(2) a physician has, in accordance with Texas Health and Safety Code §572.0025:

(A) conducted, or consulted with a physician who has conducted, either in person or through telemedicine medical services,

an admission examination in accordance with subsection (h) of this section within 72 hours before or 24 hours after admission; and

(B) issued an order admitting the prospective patient;

(3) the prospective patient meets the hospital's admission criteria;

(4) the prospective patient is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized; and

(5) in accordance with Texas Health and Safety Code §572.0025(f)(2), the administrator or administrator's designee has signed a written statement agreeing to admit the prospective patient.

(g) Intake. In accordance with Texas Health and Safety Code §572.0025(b), a hospital shall, before voluntary admission of a prospective patient, conduct an intake process, that includes:

(1) obtaining relevant information about the prospective patient, including information about finances, insurance benefits and advance directives; and

(2) explaining, orally and in writing, the prospective patient's rights described in 25 TAC Chapter 404, Subchapter E (concerning Rights of Persons Receiving Mental Health Services), including:

(A) the hospital's services and treatment as they relate to the prospective patient; and

(B) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system of the state of Texas, pursuant to Texas Health and Safety Code §576.008.

(h) Admission examination.

(1) The admission examination referenced in subsection (d)(2)(A) of this section shall be conducted by a physician in accordance with Texas Health and Safety Code Chapter 572 and include a physical and psychiatric examination conducted in the physical presence of the patient or by using audiovisual telecommunications.

(2) The physical examination may consist of an assessment for medical stability.

(3) The physician may not delegate conducting the admission examination to a non-physician.

(i) Documentation of admission order. In accordance with Texas Health and Safety Code §572.0025(f)(1), the order described in subsection (f)(2)(B) of this section shall:

(1) be issued in writing and signed by the issuing physician; or

(2) be issued orally or electronically if, within 24 hours after its issuance, the hospital has a written order signed by the issuing physician.

#### §568.23. *Emergency Detention.*

(a) Acceptance for preliminary examination. In accordance with Texas Health and Safety Code §573.021 and §573.022, a hospital shall accept for a preliminary examination:

(1) an individual who has been transported to a hospital by peace officer or emergency medical services personnel in accordance with Texas Health and Safety Code §573.001 or §573.012; or

(2) an individual who is at least 18 years of age or older and who has been transported to the hospital by the individual's guardian of the person in accordance with Texas Health and Safety Code §573.003.

(b) Preliminary examination.

(1) A physician shall examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian, in accordance with Texas Health and Safety Code §573.021.

(2) The preliminary examination shall include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to determine if the individual meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. A hospital may admit a prospective patient for emergency detention only if:

(1) in accordance with Texas Health and Safety Code §573.022(a)(2), a physician determines from the preliminary examination that:

(A) the prospective patient has a mental illness;

(B) the prospective patient evidences a substantial risk of serious harm to self or others;

(C) the described risk of harm is imminent unless the prospective patient is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) in accordance with Texas Health and Safety Code §573.022(a)(3), a physician makes a written statement:

(A) documenting the determination described in paragraph (1) of this subsection; and

(B) describing:

(i) the nature of the prospective patient's mental illness;

(ii) the risk of harm the individual evidences, demonstrated either by the prospective patient's behavior or by evidence of severe emotional distress and deterioration in the prospective patient's mental condition to the extent that the prospective patient may harm themselves or another; and

(iii) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) based on the determination described in paragraph (1) of this subsection, the physician issues an order admitting the prospective patient for emergency detention; and

(4) the prospective patient meets the hospital's admission criteria, as required by §568.21 of this subchapter (relating to Admission Criteria).

(d) Release.

(1) A hospital shall release a prospective patient accepted for a preliminary examination if:

(A) a preliminary examination of the prospective patient has not been conducted within the time frame described in subsection (b)(1) of this section; or

(B) in accordance with Texas Health and Safety Code §573.023(a), the prospective patient is not admitted for emergency detention in accordance with subsection (c) of this section on completion of the preliminary examination.

(2) In accordance with Texas Health and Safety Code §576.007, before releasing a prospective patient who is at least 18 years of age or older, a hospital shall make a reasonable effort to notify the prospective patient's family of the release if the prospective patient grants permission for the notification.

(3) Before releasing a patient who is younger than 18 years of age, a hospital shall notify the patient's legally authorized representative (LAR) or the LAR's designee of the release.

(4) Upon release, the hospital may release a minor younger than 18 years of age only to the minor's LAR or the LAR's designee.

(5) In accordance with Texas Health and Safety Code §573.021(b), a person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the person was presented to the facility, unless a written order for protective custody is obtained. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4:00 PM on the first succeeding business day, the person may be detained until 4:00 PM on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4:00 PM on the day the 48-hour period ends.

(e) Intake. A hospital shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted for emergency detention.

(1) The intake process shall include:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining to the patient and their LAR, when applicable, orally and in writing, the patient's rights described in 25 TAC Chapter 404, Subchapter E (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the hospital's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system of the state of Texas, as required by Texas Health and Safety Code §576.008.

(2) The hospital shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the hospital determines that the patient comprehends the information, the hospital shall document in the patient's medical record the reasons for such determination. If the hospital determines that the patient does not comprehend the information, the hospital shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

§568.24. *Admission of an Individual under an Order of Protective Custody, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement.*

(a) Requirements for admission under court order. A hospital may admit an individual:

(1) under an order of protective custody only if a court has issued an order in accordance with Texas Health and Safety Code §574.022;

(2) for court-ordered inpatient mental health services only if a court has issued:

(A) an order for temporary inpatient mental health services in accordance with Texas Health and Safety Code §574.034; or

(B) an order for extended inpatient mental health services in accordance with Texas Health and Safety Code §574.035;

(3) under an order for commitment issued in accordance with the Texas Code of Criminal Procedure Chapters 46B or 46C; or

(4) under an order for placement issued in accordance with Texas Family Code Chapter 55.

(b) Intake. A hospital shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted under one of the orders described in subsection (a) of this section.

(1) The intake process shall include:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining to the patient and their LAR, when applicable, orally and in writing, the patient's rights described in 25 TAC Chapter 404, Subchapter E (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the hospital's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system of the state of Texas, as required by Texas Health and Safety Code §576.008.

(2) The hospital shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the hospital determines that the patient comprehends the information, the hospital shall document in the patient's medical record the reasons for such determination. If the hospital determines that the patient does not comprehend the information, the hospital shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

§568.26. *Voluntary Treatment Following Involuntary Admission.*

A hospital may provide inpatient mental health treatment to an involuntary patient after the patient is eligible for discharge, as described in §568.84 of this chapter (relating to Discharge of an Involuntary Patient), if before the provision of such treatment:

(1) the hospital obtains written consent for voluntary inpatient mental health treatment that meets the requirements of a request for voluntary admission, as described in §568.22(a) of this subchapter (relating to Voluntary Admission); and

(2) the patient's treating physician:

(A) examines the patient; and

(B) based on that examination, issues an order for voluntary inpatient mental health treatment that meets the requirements of §568.22(i) of this subchapter.

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

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## SUBCHAPTER C. EMERGENCY TREATMENTS

### 26 TAC §568.41

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 572 and Chapter 161.

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## SUBCHAPTER D. SERVICE REQUIREMENTS

### 26 TAC §§568.61 - 568.67

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 572 and Chapter 161.

§568.61. *Inpatient Mental Health Treatment and Treatment Planning.*

(a) Inpatient mental health treatment. A hospital shall provide inpatient mental health treatment and medical care to a patient under the direction of a physician, in accordance with the highest standards accepted in medical practice, and in accordance with the patient's treatment plan and this subchapter. The treatment plan shall be appropriate to the needs and interests of the patient and be directed toward restoring

and maintaining optimal levels of physical and psychological functioning.

(b) Treatment plan content within 24 hours. A hospital, in collaboration with the patient and LAR, when applicable, shall develop and implement a written treatment plan within 24 hours after the patient's admission. If the patient is unable or unwilling to collaborate with the hospital, the circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(1) The treatment plan shall be based on the findings of:

(A) the physical examination described in §568.62(e)(1)(A) or (B) of this subchapter (relating to Medical Services);

(B) the psychiatric evaluation described in §568.62(f) of this subchapter; and

(C) the initial nursing assessment described in §568.63(e) of this subchapter (relating to Nursing Services).

(2) The treatment plan shall contain:

(A) a list of all diagnoses for the patient with notation as to which diagnoses will be treated at the hospital, including:

(i) at least one mental illness diagnosis;

(ii) any substance-related or addictive disorder diagnoses;

(iii) neurodevelopmental disorders; and

(iv) any other non-psychiatric conditions;

(B) a list of problems and needs that are to be addressed during the patient's hospitalization;

(C) a description of all treatment interventions intended to address the patient's problems and needs, including the medications prescribed and the symptoms each medication is intended to address;

(D) identification of any additional assessments and evaluations to be conducted, which shall include the social assessment described in §568.64(d) of this subchapter (relating to Social Services);

(E) identification of the level of monitoring assigned to the patient; and

(F) the rationale for the treatment interventions and any enhanced levels of monitoring described in subparagraphs (C) and (E) of this paragraph.

(c) Treatment plan content within 72 hours.

(1) Within 72 hours of the patient's admission the hospital shall:

(A) establish an interdisciplinary treatment team (IDT) for a patient;

(B) conduct the social assessment described in subsection (b)(2)(D) of this section;

(C) initiate referrals for any additional assessments and evaluations identified in accordance with subsection (b)(2)(D) of this section;

(D) review the content of the treatment plan required by subsection (b)(2) of this section, and revise the plan, if necessary, based on the findings of the social assessment or as otherwise clinically indicated; and

(E) add to the treatment plan:

(i) a description of the goals of the patient relating to the problems and needs listed in accordance with subsection (b)(2)(B) of this section;

(ii) the specific treatment modalities for each treatment intervention by type and frequency;

(iii) the IDT member responsible for providing or ensuring the provision of each treatment intervention;

(iv) the time frames and measures to evaluate progress of the treatment plan toward meeting the goals of the patient;

(v) a description of the clinical criteria for the patient to be discharged; and

(vi) a description of the recommended services and supports needed by the patient after discharge as required by §568.81(a)(3)(A) of this chapter (relating to Discharge Planning).

(2) The treatment plan shall be signed by all members of the IDT. If the patient is unable or unwilling to sign the treatment plan, the reason for or circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(d) Treatment plan review. In addition to the review required by subsection (c)(1)(D) of this section, the treatment plan shall be reviewed, and its effectiveness evaluated:

(1) when there is a significant change in the patient's condition or diagnosis or as otherwise clinically indicated;

(2) in accordance with the time frames and measures described in the treatment plan; and

(3) upon request by the patient or the patient's legally authorized representative.

(e) Treatment plan revision. In addition to a revision required by subsection (c)(1)(D) of this section, the treatment plan shall be revised, if necessary, based on the findings of any assessment, reassessment, evaluation, or re-evaluation, or as otherwise clinically indicated.

(f) Documentation of treatment plan review and revisions. A treatment plan review and revision shall be signed by all members of the IDT. If the patient is unable or unwilling to sign the review or revision, the reason for or circumstances of such inability or unwillingness shall be documented in the patient's medical record.

#### §568.67. Protection of a Patient.

(a) Modifying the environment and monitoring the patient. A hospital shall protect a patient by taking the following measures:

(1) modifying the hospital environment based on the patient's needs, including:

(A) providing furnishings that do not present safety hazards to the patient;

(B) securing or removing objects that are hazardous to the patient; and

(C) installing any necessary safety devices;

(2) monitoring the patient at the level of monitoring most recently specified in the patient's medical record; and

(3) making roommate assignments and other decisions affecting the interaction of the patient with other patients, based on patient needs and vulnerabilities.

(b) Levels of monitoring. A hospital shall:

(1) define each level of monitoring in the hospital's policies and procedures, including a description of the responsibilities of staff members for each level of monitoring;

(2) implement the level of monitoring ordered by the physician, or physician-delegated physician's assistant or advanced practice registered nurse, based on the individual's needs; and

(3) document the clinical justification for any level of monitoring.

(c) Separation of patients by age. A provider that delivers mental health community services to children and adolescents in group settings (e.g., residential, day programs, group therapy, partial hospitalization, and inpatient) shall separate children and adolescents from adults. The provider shall further separate children from adolescents according to age and developmental needs, unless there is a clinical or developmental justification in the medical record.

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## SUBCHAPTER E. DISCHARGE

### 26 TAC §§568.81 - 568.84

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 572 and Chapter 161.

#### §568.81. Discharge Planning.

(a) Involvement of staff, patient, and legally authorized representative (LAR), when applicable, in planning activities.

(1) Following the admission of a patient to a hospital, the hospital shall conduct discharge planning with the patient and LAR, as well as the LMHA or LBHA if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA or LBHA.

(2) Discharge planning shall involve the interdisciplinary treatment team (IDT), which includes the patient and LAR, as well as the LMHA or LBHA if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA or LBHA.

(3) Discharge planning shall include, at a minimum, the following activities:

(A) the patient's IDT recommending services and supports needed by the patient after discharge, including the placement after discharge;

(B) qualified staff members arranging for the services and supports recommended by the patient's IDT;

(C) qualified staff members counseling the patient, the patient's LAR, when applicable, and as appropriate, the patient's caregivers, to prepare them for post-discharge care; and

(D) Preadmission Screening and Resident Review (PASRR) as required by paragraph (5) of this subsection.

(4) The discharge plan shall consist of:

(A) a description of the individual's living arrangement after discharge that reflects the individual's preferences, choices, and available community resources;

(B) arrangements and referrals for the available and accessible services and supports agreed upon by the individual or LAR recommended in the individual's discharge plan;

(C) a written description of recommended clinical and non-clinical services and supports the individual may receive after discharge. The hospital documents arrangements and referrals for the services and supports recommended upon discharge in the discharge plan;

(D) a description of problems identified at discharge, including any issues that may disrupt the individual's stability in the community;

(E) the individual's goals, strengths, interventions, and objectives as stated in the individual's discharge plan in the hospital;

(F) comments or additional information;

(G) a final diagnosis based on the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association;

(H) the names, contact information, and addresses of providers to whom the individual will be referred for any services or supports after discharge; and

(I) in accordance with Texas Health and Safety Code §574.081, a description of:

(i) the types and amount of medication the individual needs after discharge until the individual is evaluated by a physician; and

(ii) the person or entity responsible for providing and paying for the medication.

(5) Screening and evaluation before patient discharge from hospital. In accordance with 42 CFR Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules set forth in Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, before discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability, or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability, or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code §533.035, to conduct before hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(A) to ensure that placement of the patient in a nursing facility, is necessary;

(B) to identify alternate placement options, when applicable; and

(C) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(b) Discharge summary. The patient's treating physician shall prepare a written discharge summary that includes:

(1) a description of the patient's treatment at the hospital and the response to that treatment;

(2) a description of the patient's condition at discharge;

(3) a description of the patient's placement after discharge;

(4) a description of the services and supports the patient will receive after discharge;

(5) a final diagnosis based on the DSM;

(6) a description of the amount of medication the patient will need until the patient is evaluated by a physician; and

(7) in accordance with Texas Health and Safety Code §574.081(c) and (h), for involuntary patients admitted under an order described in §568.24(a)(2) of this chapter (related to Admission of an Individual under an Order of Protective Custody, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement), the name of the individual or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the hospital.

(c) Documentation of refusal. If it is not feasible for any of the activities listed in subsection (a)(3) of this section to be performed because the patient, the patient's LAR, when applicable, or the patient's caregivers refuse to participate in the discharge planning, the circumstances of the refusal shall be documented in the patient's medical record.

#### §568.83. *Discharge of a Voluntary Patient Requesting Discharge.*

(a) Request for discharge. If a hospital is informed that a voluntary patient desires to leave the hospital or a voluntary patient or the patient's legally authorized representative (LAR), when applicable, requests that the patient be discharged, the hospital shall, in accordance with Texas Health and Safety Code §572.004:

(1) inform the patient or the patient's LAR that the request must be in writing and signed, timed, and dated by the requestor; and

(2) if necessary, and as soon as possible, assist the patient in creating a written request for discharge and present it to the patient for the patient's signature.

(b) Responding to a written request for discharge. If a written request for discharge from a voluntary patient or the patient's LAR, when applicable, is made known to a hospital, the hospital shall:

(1) within four hours after the request is made known to the hospital, notify the treating physician or, if the treating physician is not available during that time, notify another physician who is a hospital staff member of the request;

(2) file the request in the patient's medical record; and

(3) if the request is from a patient admitted under §568.22(a)(3)(D) of this chapter (relating to Voluntary Admission), notify the patient's LAR of the request, except as provided by 42 CFR Part 2.

(c) Discharge or examination. In accordance with Texas Health and Safety Code §572.004(c) and (d), if the physician who is notified in accordance with subsection (b)(1) of this section:

(1) does not have reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, a hospital shall discharge the patient within the four-hour time period described in subsection (b)(1) of this section; or

(2) has reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, the physician shall examine the patient as soon as possible within 24 hours after the request for discharge is made known to the hospital.

(d) Discharge if not examined within 24 hours or if criteria not met.

(1) If a patient whom a physician believes may meet the criteria for court-ordered inpatient mental health services or emergency services is not examined within 24 hours after the request for discharge is made known to the hospital, the hospital shall discharge the patient.

(2) In accordance with Texas Health and Safety Code §572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient does not meet the criteria for court-ordered inpatient mental health services or emergency detention, the hospital shall discharge the patient upon completion of the examination.

(e) Discharge or filing application if criteria met. In accordance with Texas Health and Safety Code §572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient meets the criteria for court-ordered inpatient mental health services or emergency detention, the hospital shall, by 4:00 p.m. on the next business day:

(1) file an application for court-ordered inpatient mental health services or emergency detention and obtain a court order for further detention of the patient; or

(2) discharge the patient.

(f) Notification by physician. In accordance with Texas Health and Safety Code §572.004(d), if the hospital intends to detain a patient to file an application and obtain a court order for further detention of the patient, a physician shall:

(1) notify the patient of such intention; and

(2) document the reasons for the decision to detain the patient in the patient's medical record.

(g) Withdrawal of request for discharge. In accordance with Texas Health and Safety Code §572.004(f), a hospital is not required to complete the discharge process described in this section if the patient makes a written statement to withdraw the request for discharge.

(h) Discharge of patients receiving court-ordered mental health services. In accordance with Texas Health and Safety Code §574.81 (relating to Continuing Care Plan Before Furlough or Discharge), for any patient residing in an psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a local mental health authority (LMHA) or a behavioral mental health authority (LBHA), the physician responsible for the patient's treatment is required to inform the LMHA/LBHA prior to the discharge must include them in planning the discharge of a patient. The plan must address:

(1) the patient's mental health and physical needs;

(2) the need for outpatient mental health services following furlough or discharge, if applicable; and

(3) the need for sufficient psychoactive medications for the patient until the patient sees a physician, not to exceed seven days after discharge.

§568.84. *Discharge of an Involuntary Patient.*

(a) Discharge from emergency detention.

(1) Except as provided by §568.26 of this chapter (relating to Voluntary Treatment Following Involuntary Admission), and in accordance with Texas Health and Safety Code §573.023(b) and §573.021(b), a hospital shall immediately discharge a patient under emergency detention if either of the following occurs:

(A) the administrator or the administrator's designee determines, based on a physician's determination, that the patient no longer meets the criteria described in §568.23(c)(1) of this chapter (relating to Emergency Detention); or

(B) except as provided in paragraphs (2) and (3) of this subsection, 48 hours elapse from the time the patient was presented to the hospital and the hospital has not obtained a court order for further detention of the patient.

(2) In accordance with Texas Health and Safety Code §573.021(b), if the 48-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the hospital, the patient may be detained until 4:00 p.m. on such business day.

(b) Discharge under Order of Protective Custody. Except as provided by §568.26 of this chapter and in accordance with Texas Health and Safety Code §574.028, a hospital shall immediately discharge a patient under an Order of Protective Custody if any of the following occurs:

(1) the administrator or the administrator's designee determines that, based on a physician's determination, the patient no longer meets the criteria described in Texas Health and Safety Code §574.022(a);

(2) the administrator or the administrator's designee does not receive notice that the patient's continued detention is authorized after a probable cause hearing held within the time prescribed by Texas Health and Safety Code §574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time prescribed by Texas Health and Safety Code §574.005; or

(4) an order to release the patient is issued in accordance with Texas Health and Safety Code §574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by §568.26 of this chapter, and in accordance with Texas Health and Safety Code §574.085 and §574.086(a), a hospital shall immediately discharge a patient under a temporary or extended order for inpatient mental health services if either of the following occurs:

(A) the order for inpatient mental health services expires; or

(B) the administrator or the administrator's designee determines that, based on a physician's determination, the patient no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with Texas Health and Safety Code §574.086(b), before discharging a patient in accordance with para-

graph (1) of this subsection, the administrator or administrator's designee shall consider whether the patient should receive court-ordered outpatient mental health services in accordance with a modified order described in Texas Health and Safety Code §574.061.

(d) Discharge under Texas Code of Criminal Procedure order for commitment. A patient admitted under an order for commitment issued in accordance with the Texas Code of Criminal Procedure Chapter 46B or 46C may only be discharged in accordance with the applicable provisions in Chapter 46B or 46C.

(e) Discharge under Texas Family Code order for placement. A patient admitted under an order for placement issued in accordance with Texas Family Code Chapter 55 shall be discharged in accordance with the Texas Family Code Chapter 55.

(f) Discharge planning shall involve the interdisciplinary treatment team, which includes the patient and LAR, as well as the LMHA or LBHA if the patient is in a psychiatric inpatient bed funded under a contract with HHSC or operated by or funded under a contract with a LMHA or LBHA.

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## SUBCHAPTER F. DOCUMENTATION

### 26 TAC §568.101

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 572 and Chapter 161.

#### §568.101. *Content of Medical Record.*

(a) Medical record. A hospital shall maintain a medical record for a patient. The medical record shall include, at a minimum:

(1) documentation of whether the patient is a voluntary patient, on emergency detention, or under a court order, including the physician or court order, as appropriate;

(2) any applications for admission, court orders for admission, or notices of detention;

(3) documentation of the reasons the patient, legally authorized representative (LAR), family members, or other caregivers state that the patient was admitted to the hospital;

(4) justification for each mental illness diagnosis and any substance-related or addictive disorder diagnosis;

(5) the level of monitoring assigned and implemented in accordance with §568.25 of this chapter (relating to Monitoring Upon

Admission) and any changes to such level before the implementation of the patient's treatment plan;

(6) the patient's treatment plan;

(7) the name of the patient's treating physician;

(8) the names of the members of the patient's interdisciplinary treatment team (IDT), if required by the patient's length of stay;

(9) written findings of the physical examination described in §568.62(e)(1)(A) or (B) of this chapter (relating to Medical Services);

(10) written findings of:

(A) the psychiatric evaluation described in §568.62(f) of this chapter; and

(B) the assessments described in §568.63(e) of this chapter (relating to Nursing Services), §568.64(d) of this chapter (relating to Social Services), §568.65(b) of this chapter (relating to Therapeutic Activities), and §568.66(b) of this chapter (relating to Psychological Services); and

(C) any other assessment of the patient conducted by a staff member;

(11) the progress notes for the patient as described in subsection (b) of this section;

(12) documentation of the monitoring of the patient by the staff members responsible for such monitoring, including observations of the patient at pre-determined intervals;

(13) documentation of the discharge planning activities required by §568.81(a)(3) of this chapter (relating to Discharge Planning);

(14) the discharge summary as required by §568.81(b) of this chapter;

(15) the estimate of charges required to be made part of the record by Texas Health and Safety Code §164.009;

(16) medication consent required by Texas Health and Safety Code §576.025;

(17) medication administration records; and

(18) evidence that the patient or LAR received and signed a copy of the patients' rights booklet explaining rights listed in the patient bill of rights, plus that it was explained orally or by other means calculated to communicate these rights to a patient. This is specifically required by Texas Health and Safety Code §321.002(g)(2) to be included in the patient's record.

(b) Progress notes. The progress notes referenced in subsection (a)(11) of this section must be documented in accordance with this subsection.

(1) The appropriate members of the patient's IDT shall make written notes of the patient's progress to include, at a minimum:

(A) documentation of the patient's response to treatment provided under the treatment plan;

(B) documentation of the patient's progress toward meeting the goals listed in the patient's treatment plan; and

(C) documentation of the findings of any re-evaluation or reassessment conducted by a staff member.

(2) Requirements regarding the frequency of making progress notes are as follows:

(A) a physician shall document the findings of a re-evaluation described in §568.62(g) of this chapter at the time each re-evaluation is conducted; and

(B) a registered nurse shall document the findings of a reassessment described in §568.63(f) of this chapter at the time each reassessment is conducted.

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## SUBCHAPTER G. STAFF DEVELOPMENT

### 26 TAC §568.121

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code Chapter 572 and Chapter 161.

#### §568.121. *Staff Member Training.*

(a) Staff member training shall be in accordance with §301.331 of this title (relating to Competency and Credentialing).

(1) A hospital administrator, or administrator's designee, shall:

(A) ensure that services are provided by staff members who are operating within their scope of their license, credentialing, job description, or contract specification, and in accordance with applicable state law and rule, including 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services);

(B) define competency-based expectations for each hospital staff position and ensure each staff member receives initial training before the staff member assumes responsibilities required by the hospital and annually throughout the staff member's employment with the hospital;

(C) provide hospital staff live, interactive, instructor-led electronic or face-to-face training competency-based training; and

(D) require all staff members to demonstrate required competencies delineated in §301.331(a)(3)(A) of this title, including:

(i) identifying, preventing, and reporting abuse and neglect of patients and unprofessional or unethical conduct in the hospital, as defined by Texas Health and Safety Code §161.131 (relating to Definitions);

(ii) identifying, preventing, and reporting abuse, neglect, and exploitation as follows, in accordance with Texas Health and Safety Code §161.133 (relating to In-service Training):

(I) residential staff must receive eight hours of training;

(II) training must be conducted in person, and not through teleconferencing, web-based video conferencing, or other technology;

(III) a hospital must ensure all new employees receive training on abuse, neglect, and exploitation; and

(IV) a hospital may provide abuse, neglect, and exploitation training to staff or may choose to contract with an outside entity to provide the training;

(iii) preserving and protecting dignity and rights of a patient in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services); and

(iv) preserving and protecting confidentiality of a patient's information in accordance with Texas Health and Safety Code Chapter 611 or Chapter 241, Subchapter G, as applicable, 42 CFR Part 2, and 45 CFR Parts 160 and 164.

(2) All registered nurses (RNs), licensed vocational nurses (LVNs), and unlicensed assistive personnel (UAP) shall receive training in:

(A) monitoring for patient safety in accordance with §568.67 of this chapter (relating to Protection of a Patient);

(B) infection control in accordance with §510.41(d) of this title (relating to Facility Functions and Services); and

(C) the hospital's mandatory overtime policy required by §568.63(k) of this chapter (relating to Nursing Services).

(3) An RN and LVN shall receive training in the process for reporting concerns regarding the adequacy of the staffing plan, as described in §568.63(h) of this chapter.

(4) A staff member routinely providing treatment to, working with, or providing consultation about a patient who is younger than 18 years of age shall receive training in the aspects of growth and development (including physical, emotional, cognitive, educational and social) and the treatment needs of patients in the following age groups:

(A) early childhood (1-5 years of age);

(B) late childhood (6-13 years of age); and

(C) adolescent (14-17 years of age).

(5) A staff member routinely providing treatment to, working with, or providing consultation about a patient diagnosed with co-occurring psychiatric and substance-related disorders (COPSD) shall receive training in substance-related and addictive disorders.

(6) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric patient shall receive training in the social, psychological, and physiological changes associated with aging.

(7) In accordance with Texas Health and Safety Code §572.0025(e), a pre-admission screening professional (PASP) shall receive at least eight hours of pre-admission screening and intake training, as described in subsection (c) of this section.

(8) In accordance with Texas Health and Safety Code §572.0025(e), a staff member whose responsibilities include conducting the hospital's intake process for a patient shall receive at least eight hours of pre-admission screening and intake training, as described in subsection (c) of this section.

(9) A staff member who may initiate an involuntary intervention shall receive training in and demonstrate competency in performing such interventions in accordance with 25 TAC Chapter 415,

Subchapter F (relating to Interventions in Mental Health Services) prior to performing such interventions.

(b) A staff member providing direct patient care shall maintain certification in a course developed by the American Heart Association, the American Red Cross, or the Health and Safety Institute in recognizing and caring for breathing and cardiac emergencies. The course shall teach the following skills appropriate to the age of the hospital's patients:

- (1) rescue breathing, with and without devices;
- (2) airway obstruction;
- (3) cardiopulmonary resuscitation; and
- (4) use of an automated external defibrillator.

(c) Pre-admission screening and intake training. The pre-admission screening and intake training required by subsections (a)(7) and (8) of this section shall provide instruction to staff members regarding:

- (1) assessing, interviewing, and diagnosing an individual with a mental illness and an individual diagnosed with COPSD;
- (2) obtaining relevant information about the patient, including information about finances, insurance benefits and advance directives;
- (3) explaining, orally and in writing, the patient's rights described in 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);
- (4) explaining, orally and in writing, the hospital's services and treatment as they relate to the patient;
- (5) informing the patient in writing of the existence, telephone number, and address of the protection and advocacy system of the state of Texas; and
- (6) determining whether the patient comprehends the information provided in accordance with paragraphs (3) - (5) of this subsection.

(d) Frequency of training. A hospital shall provide the training described in subsection (a) of this section, periodically, as follows.

(1) A staff member shall receive the patient rights training required by subsection (a)(1)(D)(iii) of this section:

- (A) before assuming responsibilities at the hospital; and
- (B) annually throughout the staff member's employment or association with the hospital.

(2) A staff member shall receive the training in identifying, preventing, and reporting abuse and neglect of patients and unprofessional or unethical conduct required by subsection (a)(1)(D)(i) of this section annually throughout the staff member's employment or association with the hospital, as set forth in Texas Health and Safety Code §161.133.

(3) A staff member shall receive the training required by subsections (a)(1)(D) and (a)(2) - (5) of this section:

- (A) before assuming responsibilities at the hospital; and
- (B) annually throughout the staff member's employment or association with the hospital.

(4) A staff member shall have the certification required by subsection (b) of this section:

- (A) before assuming responsibilities at the hospital; or

(B) not later than 30 days after the staff member is hired by the hospital if another staff member who has such certification is physically present and on-duty on the same unit on which the uncertified staff member is on-duty.

(5) A pre-admission screening professional (PASP) shall receive the training required by subsection (a)(7) of this section:

- (A) before the PASP conducting a pre-admission screening; and
- (B) annually throughout the PASP's employment or association with the hospital.

(6) A staff member shall receive the training required by subsection (a)(8) of this section:

- (A) before conducting the intake process; and
- (B) annually throughout the staff member's employment or association with the hospital.

(7) A staff member shall receive the training required by subsection (a)(9) of this section at the intervals described in 25 TAC Chapter 415, Subchapter F .

(e) Documentation of training.

(1) A hospital shall document that a staff member has successfully completed the training described in subsection (a) of this section including:

- (A) the date of the training;
- (B) the length of the training session; and
- (C) the name of the instructor.

(2) A hospital shall maintain certification or other evidence issued by the American Heart Association, the American Red Cross or the Health and Safety Institute that a staff member has successfully completed the training described in subsection (b) of this section.

(f) Performance in accordance with training. A staff member shall perform the staff member's responsibilities in accordance with the training and certification required by this section.

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## SUBCHAPTER H. PERFORMANCE IMPROVEMENT

**26 TAC §§568.141 - 568.144**

STATUTORY AUTHORITY

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION

#### SUBCHAPTER L. ELECTRONIC SUBMISSIONS AND COMMUNICATIONS

#### 28 TAC §1.1301, §1.1302

The Commissioner of Insurance adopts new 28 TAC §1.1301, relating to electronic submissions made to the Texas Department of Insurance (TDI), and new §1.1302, relating to electronic communications from TDI. New §1.1301 is adopted without changes to the proposed text published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7977) and will not be republished. TDI revised the text of new §1.1302, as published in the November 6, 2020 (45 TexReg 7977) issue, in response to public comments. Section 1.1302 will be republished.

**REASONED JUSTIFICATION.** New §1.1301 is added to generally authorize persons to make any submissions to TDI electronically. New §1.1302 is added to recognize that TDI may officially communicate by email with regulated persons. Section 1.1302 requires regulated persons to designate an email address for such communications from TDI. By allowing electronic submissions and communications instead of paper submissions and communications by mail, the new sections will reduce the regulatory burden and costs imposed on regulated persons and promote administrative efficiency and reduce costs for TDI.

Section 1.1301. Section 1.1301(a) generally authorizes persons to make submissions to TDI electronically, unless statute requires a method of submission that is not electronic. Examples of statutory provisions that require a non-electronic method of submission to TDI include Insurance Code §§84.046(2)(B), 541.255, 2651.151, and 2651.252. Subsection (a) supersedes any other provision in 28 TAC Part 1. Examples of rules that are superseded include 28 TAC §§5.9941, 12.101, 13.403, and 26.400.

Section 1.1301(b) states that an electronic submission must be made in accordance with any procedure established by statute or rule for that electronic submission. Examples of procedures for electronic submission established by statute include Insurance Code §1467.051 and §1467.084, which require a request for mediation or arbitration to be electronically submitted through a por-

tal on TDI's website. Examples of procedures for electronic submission established by rule include 28 TAC §3.1760(a), which requires life settlement data reports to be submitted to a particular email address, and 28 TAC §5.9310(f), which requires electronic filings through the NAIC System for Electronic Rate and Form Filing (SERFF). If a procedure for the electronic submission is not established by statute or rule, the electronic submission must be made as specified on TDI's website.

Section 1.1302. Section 1.1302(a) defines for this section the term "regulated person" to encompass all persons regulated by the Commissioner and the State Fire Marshal. In response to comment, the text of subsection (a) as proposed has been changed by replacing the word "including" with "meaning" and adding "or other authorization" to capture the appropriate persons regulated by TDI.

Section 1.1302(b) specifies that TDI may send official communications to the email address designated by a regulated person, unless statute requires a different method of communication. Examples of statutory provisions that require a different method of communication include Insurance Code §§81.002, 804.203, and 1201.007.

Section 1.1302(c) requires all regulated persons to provide to TDI an email address designated for the receipt of official communications from TDI, except as provided by §1.1302(d). Regulated persons should provide the email address as specified on TDI's website. If emails may no longer be received at a designated email address, the regulated person must notify TDI and provide a new email address within 10 business days. In response to comment, the text of subsection (c) as proposed has been changed by replacing the acronym "TDI" with "the department" for consistency with the rest of the rule text.

Section 1.1302(d) states that notice or service requirements are satisfied if TDI communicated by email under the section, unless statute or 28 TAC §1.90 requires a different method of notice or service. Examples of statutory provisions that require a different method of notice include Insurance Code §81.002 and §1201.007.

Section 1.1302(e) provides an avenue for a regulated person to be relieved of the requirements of §1.1302, if the regulated person notifies TDI that the regulated person does not have the technological capability to maintain an email address designated for official department communications or for other good reason does not wish to receive communications by email. In response to comment, the text of subsection (e) as proposed has been changed by replacing the acronym "TDI" with "the department" for consistency with the rest of the rule text.

In response to comment, the text of §1.1302 as proposed has been changed by adding subsection (f). Subsection (f) makes the requirement under subsection (c) that all regulated persons provide to TDI an email address designated for receipt of official communications applicable beginning January 1, 2022. This is intended to give regulated persons time to prepare for the shift to receiving electronic communications from TDI.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from eight commenters. The Insured Retirement Institute and Office of Injured Employee Counsel commented in support of the proposal. The American Property Casualty Insurance Association, Insurance Council of Texas, McDermott Will & Emery, Texas Association of Health Plans, Texas Association of Life & Health Insurers, and Texas

Mutual Insurance Company commented in general support of the proposal but recommended certain changes.

After the end of the comment period stated in the proposal, TDI also received a written comment from a ninth commenter. Because the comment was not submitted within the stated comment period, it is not addressed in this order.

#### General Comments

Comment: While not requesting a public hearing, the Insurance Council of Texas and American Property Casualty Insurance Association also suggested that TDI have a stakeholder meeting prior to the adoption of the rules due to certain concerns.

Agency Response: While TDI understands some of the concerns raised and encourages stakeholders to participate in discussions as TDI implements this rule, TDI does not believe it is necessary to delay the adoption of the rules to address these concerns. To address some of the concerns regarding implementation, TDI is making the requirement under §1.1302(c) that all regulated persons provide to TDI an email address designated for receipt of official communications applicable beginning January 1, 2022.

#### Comments on §1.1301.

Comment: One commenter recommends that TDI allow for electronic submissions using a technology that provides for secure transmission to TDI.

Agency Response: TDI agrees that electronic submissions of confidential or proprietary information should be made using a secure method of transmission but declines to modify the language of §1.1301. Any necessary security measures will be established during implementation.

Comment: One commenter asks TDI to identify or give examples of what statutes, if any, require non-electronic filing in the rule.

Agency Response: TDI disagrees that specific statutes should be identified in the rule text but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes in the rule text would require this rule to be regularly updated to remain accurate.

Comment: One commenter asks that TDI's website provide a clear link on filing submissions and asks that filing parties receive a verification when submissions are made by email. The commenter also notes that filings made by email may not get information to a reviewer quickly.

Agency Response: TDI appreciates the comment and will take these recommendations into consideration in the development and improvement of our internal processes.

Comment: One commenter asks why §1.1301(b) states that a filing "must" be made in accordance with a statute *or rule*, but §1.1301(a) only mentions statute. The commenter requests that the rule identify those rules or exceptions that require some type of electronic filing.

Agency Response: TDI disagrees that specific statutes or rules should be identified in the rule text. To continue to be accurate, it would need to be frequently updated as TDI's rules are changed. Section 1.1301(a) provides that any submission to TDI may be made electronically and is intended to supersede any other rule in 28 TAC Part 1. But it cannot, and is not intended to, supersede any statute that requires a non-electronic method of submission.

Section 1.1301(b) addresses a related, but different issue--the particular procedure for making an electronic submission. Section 1.1301(b) requires that a submission made electronically be made in accordance with the procedure set out in statute or rule for that electronic submission. Examples of statutes that prescribe a specific procedure for electronic submissions are Insurance Code §1467.051 and §1467.084, which require a request for mediation or arbitration to be electronically submitted through a portal on TDI's website. As the commenter pointed out, an example of a rule prescribing a specific procedure for electronic submissions is 28 TAC §5.9310(f), which requires electronic filings through the NAIC System for Electronic Rate and Form Filing (SERFF). For those examples, §1.1301(b) requires that electronic submissions continue to be made in accordance those specific procedures established by those provisions. But if no specific procedure for an electronic submission is set out in statute or rule, then the procedure set out on TDI's website should be followed.

#### Comments on §1.1302.

Comment: One commenter expresses concern that the following portion of the definition of "regulated person" in §1.1302(a) is overly broad: "holding an authorization, *including* a permit, license, certificate of authority, or certificate of registration, issued or existing under the Commissioner's or the State Fire Marshal's authority or the Insurance Code" (emphasis added).

Agency Response: TDI agrees and has changed the word "including" to "meaning" and added "other authorization" to capture the appropriate regulated persons. This is consistent with the definition of "authorization" in Insurance Code §82.001.

Comment: Two commenters ask that TDI clarify how confidential and proprietary information will be secured when using the provided email address. The commenters recommend that TDI take measures to secure communications, including adopting encryption in transit for the transmission of confidential and proprietary information.

Agency Response: TDI agrees that electronic communications of confidential or proprietary information should be made using a secure method of transmission but declines to modify the language of §1.1302. Any necessary security measures will be established during implementation.

Comment: One commenter recommends replacing "TDI" in three places with "the department."

Agency Response: TDI partially agrees with the comment and has replaced "TDI" with "the department" in §1.1302(c) and (e), but not in §1.1302(b) because that instance is a quote from the title of 28 TAC §1.90.

Comment: One commenter requests confirmation that §1.1302(b) would not supersede State Office of Administrative Hearing (SOAH) rules in 1 TAC Chapter 155, particularly the requirements of §155.105 to serve parties and their representatives electronically through the electronic filing manager if the email address of the party or attorney to be served is on file.

Agency Response: TDI confirms that §1.1302(b) is not intended to supersede any provision outside of 28 TAC Part 1, including 1 TAC Chapter 155. Section 1.1302(b) is also not intended to supersede 28 TAC §1.90, which contains the joint memorandum of understanding between TDI and SOAH concerning procedures for contested cases before SOAH.

Comment: One commenter states that the term "official communications" in §1.1302(b) is vague and not defined. The commenter asks TDI to specify the type of communications it intends to send electronically.

Agency Response: TDI disagrees with specifying the various types of communications that it intends to send electronically. The term "official communications" is not intended to be a limiting term. It is intended to encompass all communications that TDI may send or is required to send in order to carry out its official duties under statute or rule.

Comment: One commenter asserts that the phrase "unless a statute requires a different form of communication" in §1.1302(b) is vague and should identify any statutes that require a different form of communication.

Agency Response: TDI disagrees that specific statutes should be identified in the rule, but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes would require this rule to be regularly updated to remain accurate.

Comment: One commenter recommends allowing regulated entities to provide three to five email addresses instead of only one in §1.1302(c).

Agency Response: TDI declines to modify §1.1302(c). Communicating with regulated persons using multiple email addresses could complicate those communications and potentially lead to inadvertent errors when sending communications. TDI notes that there are technological methods that regulated persons may use to accomplish the same result, such as designating an email address that automatically forwards emails to others or designating a general email address that multiple people have access to.

Comment: One commenter requests guidance as to how it can assure that the appropriate people within a company see the notification in a timely manner in case the person with the designated email is either absent or has left the company. The commenter notes that one possibility may be for a company to set up an email address that would automatically forward to a list of people within the company. In related comments, two other commenters point out that large companies may need to provide a single portal email address for communications rather than naming one or more individuals, but other companies may prefer to use the names of individuals or agents for service of process. One of the commenters suggests allowing for these differing methods in the rule or providing a forum on how this should be implemented.

Agency Response: TDI understands the concern and intends §1.1302(c) to be a flexible provision under which regulated persons can determine for themselves what email address makes the most sense to designate. A regulated person could designate an organizational or individual email address or the email address of an agent for the service of process. As noted in the previous comment response, there are technological methods that regulated persons may use to ensure the appropriate people within an organization see any email sent from TDI in a timely manner, including designating an email address that automatically forwards emails to others or designating a general email address that the appropriate people have access to. TDI also encourages stakeholders to provide input as the rule is implemented.

Comment: One commenter requests clarification on whether individual insurance company employees who may hold a separate

license as an adjuster, agent, risk manager, or other license type will need to provide a separate email address or whether the company can have a single portal for all official questions for the insurer and all its employees.

Agency Response: As explained in the previous comment response, TDI intends §1.1302(c) to be a flexible provision. It will be up to each regulated person to determine which email address to designate.

Comment: One commenter states that the requirement to provide an email address for official communications in §1.1302(c) should be directed at licensees.

Agency Response: TDI agrees if the commenter means "licensees" to encompass those holding an authorization from TDI, meaning a permit, license, certificate of authority, or certificate of registration, issued or existing under the Commissioner's or the State Fire Marshal's authority or the Insurance Code. TDI has modified the definition of "regulated person" in §1.1302(a) to change the word "including" to "meaning" and added "other authorization" to capture the appropriate regulated persons.

Comment: One commenter indicates the phrase "unless a different method of notice or service is required by statute or §1.90 of this title" in §1.1302(c) is vague and should identify any statutes that fit within that exception.

Agency Response: TDI disagrees that specific statutes should be identified in the rule text, but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes would require this rule to be regularly updated to remain accurate.

STATUTORY AUTHORITY. TDI adopts §1.1301 and §1.1302 under Insurance Code §36.001 and Government Code §417.005.

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.

Government Code §417.005 provides that the Commissioner may adopt necessary rules to guide the State Fire Marshal and fire and arson investigators commissioned by the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner.

*§1.1302. Electronic Communications from the Texas Department of Insurance.*

(a) In this section, "regulated person" means an individual, corporation, association, partnership, or other artificial person holding an authorization, meaning a permit, license, certificate of authority, certificate of registration, or other authorization, issued or existing under the Commissioner's or the Texas State Fire Marshal's authority or the Insurance Code.

(b) Notwithstanding any other provision in Part 1 of this title (relating to Texas Department of Insurance) other than §1.90 of this title (relating to Joint Memorandum of Understanding (MOU) between Texas Department of Insurance (TDI) and State Office of Administrative Hearings (SOAH) Concerning Procedures for Contested Cases before SOAH and Responsibilities of Each Agency), the department may send official communications to the email address designated for such communications by a regulated person, unless statute requires a different method of communication.

(c) Except as provided by subsection (e) of this section, all regulated persons must provide an email address that is designated

for receipt of official department communications. Regulated persons should provide the email address as specified on the department's website. If communications may no longer be received at the designated email address, the regulated person must notify the department and designate a new email address within 10 business days.

(d) Notice or service sent by email under this section satisfies any notice or service requirements, unless a different method of notice or service is required by statute or §1.90 of this title.

(e) If a regulated person does not have the technological capability to maintain an email address designated for official department communications, or for good reason does not wish to receive communications by email from the department, the regulated person should notify the department as specified on the department's website regarding address changes.

(f) Subsection (c) of this section is applicable beginning January 1, 2022.

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 May 3, 2021.

TRD-202101739

James Person

General Counsel

Texas Department of Insurance

Effective date: May 23, 2021

Proposal publication date: November 6, 2020

For further information, please call: (512) 676-6587

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 355. RESEARCH AND PLANNING FUND**

**SUBCHAPTER C. REGIONAL WATER PLANNING GRANTS**

**31 TAC §§355.91 - 355.93**

The Texas Water Development Board ("TWDB" or "board") adopts amendments to 31 TAC §§355.91 - 355.93. The proposal is adopted without changes to the text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1347). The rules will not be republished.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.**

The purpose of the amendments to 31 TAC Chapter 355 is to address concerns raised by the regional water planning groups, which was also identified as a recommendation from the Inter-regional Planning Council, established by House Bill 807 of the 86th Legislature, to allow for the limited reimbursement of certain labor costs for regional water planning administrative agents. The revisions also clarify language throughout the section.

**SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.**

*Subchapter C. Regional Water Planning Grants.*

*Section 355.91. Notice of Funds and Submission and Review of Applications.*

Section 355.91(a) is revised to remove the requirement that the request for funding applications be published in the *Texas Register*. Eligible applicants are limited to the Political Subdivision designated by each regional water planning group. These entities will be notified directly by the Executive Administrator (EA) that funding is available.

Section 355.91(b) is revised to add clarity to the rule.

Section 355.91(c) is revised to comply with §357.21 as modified by the current rulemaking project.

New §355.91(d) is added to clarify the statutory requirements to be included in a funding application.

Renumbered §355.91(e) is revised to remove the requirement for multiple applications during the five-year planning cycle. The Board has discretion to amend the regional water planning grant contracts to add additional funds and scope of work tasks without a new application for funding during the same planning cycle.

Renumbered §355.91(f) is revised to closely adhere to the statutory requirements.

*Section 355.92. Use of Funds.*

Section 355.92(a)(5) is renumbered as §355.92(a)(4) and is revised to clarify that the EA may deem an analysis of benefits and costs of water management strategies eligible for funding at the EA's discretion and specifies items the EA must consider. Section 355.92(d) is removed, as the EA consideration is now addressed in new §355.92(a)(4).

Section 355.92(a)(4) is renumbered as §355.92(b) and provides clarification on ineligible expenses for RWPG members and the RWPG's designated political subdivisions.

Section 355.92(b) is renumbered as §355.92(c) and clarifies certain eligible administrative costs that are specifically limited by the regional water planning grant contract. This includes a new eligible cost for limited reimbursement of the RWPG's political subdivision's personnel costs associated with RWPG meetings and hearings.

Section 355.92(c) is renumbered as §355.92(d) and is revised to clarify the subcontracting process is through the RWPG's political subdivision.

*Section 355.93. Board Consideration of Applications; Applicant's Responsibilities; and Contract.*

Sections 355.93(a), (b), and (c) are revised to clarify rule language.

Section 355.93(d) is revised to clarify that the contracts and subcontracts for regional water planning must, at the direction of the EA, include either a scope of work provided by the EA or a scope of work developed by the RWPG if requested by the EA and a budget subdivided into task budgets.

**REGULATORY IMPACT ANALYSIS DETERMINATION**

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Govern-

ment Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to define eligible expenses and clarify existing language.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed a standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under the authority of Texas Water Code §16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify language and to provide for some reimbursement of labor costs for regional water planning administration.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENT:

No comments were received.

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The rulemaking is adopted under the additional authority of Texas Water Code §15.403 which provides the TWDB with the authority to adopt rules necessary to carry out the purposes of the Research and Planning Program and Texas Water Code §15.4061 which provides the TWDB with the authority to enter into contracts with political subdivisions and pay from the research and planning fund, all or part of the cost of developing or revising Regional Water Plans in accordance with the statute.

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 May 7, 2021.

TRD-202101796

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: May 27, 2021

Proposal publication date: February 26, 2021

For further information, please call: (512) 463-7686



## CHAPTER 357. REGIONAL WATER PLANNING

### SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

#### 31 TAC §357.21

The Texas Water Development Board ("TWDB" or "board") adopts an amendment to 31 TAC §357.21. The proposal is adopted with changes to the text as published in the February 26, 2021, issue of the *Texas Register* (46 TexReg 1351). The rule will be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The purpose of this rule change is to simplify regional water planning public notice requirements and remove redundant references in the section to notice requirements. The revisions closely align with the new flood planning public notice rules, where applicable, to reduce confusion among public notice requirements of the two regional planning processes administered by the agency.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

*Subchapter B. Guidance Principles and Notice Requirements.*

*§357.21. Notice and Public Participation.*

Subsections (b) - (e) are rescinded and the requirements within those subsections are rewritten as (g) - (h). The language in current subsection (e) is fully removed to no longer require a costly public notice for a non-competitive funding process.

New subsection (b) requires that each Regional Water Planning Group (RWPG) maintain a website where public notice and meeting materials are posted. This is currently already required by the regional water planning contract scopes of work.

New subsection (c) clarifies that oral public comment must be accepted at each public meeting or hearing and the RWPGs must specify when and how the public may submit written comment.

New subsection (d) requires the RWPGs to maintain a list of interested parties of who will receive electronic notice of public meetings and hearings.

New subsections (e) - (f) specify the minimum requirements for all meeting and hearing notices. RWPGs may add additional notice requirements above the requirements specified by rule to their bylaws. Subsection (e) is revised to correct a typographical error.

New subsection (g)(1) specifies that regular RWPG meetings, and any committee or subcommittee meetings, are subject to a minimum seven-day public notice. Additional RWPG actions that would be subject to the seven-day notice are specified in this rule. This revises the previous requirement that regular RWPG meetings occur with a minimum three-day public notice. A seven-day public notice allows for increased public transparency of upcoming meetings. As referenced in the TWDB's Best Practices Guide for RWPG Political Subdivisions, the TWDB's Regional Water Planning Public Notice tool, developed in coordination with a RWPG political subdivision, recommends providing public notice at least seven days prior to an RWPG meeting. The rule also specifies the minimum time for posting meeting materials as three days prior to and seven days following a public meeting. Subsection (g)(1) is revised to clarify that materials must be posted on the RWPG's website.

New subsection (g)(2) specifies certain actions that are subject to a minimum 14-day public notice and public comment period. The rule also specifies the minimum time for posting meeting materials as seven days prior to and 14 days following the public meeting. This subsection revises the previous 14-day public notice requirements by requiring adoption of the final regional water plan to be subject to a 14-day notice, removes the requirement for a 14-day follow up comment period after an RWPG takes action, and removes the requirement to submit public comments on minor amendments to the TWDB from the public notice section. The requirement to provide public comments on minor amendments to the TWDB will be moved to §357.50 during a subsequent rulemaking to occur in 2021. Subsection (g)(2) is revised to clarify that materials must be posted on the RWPG's website.

New subsection (g)(3) specifies public hearings requirements for declarations to pursue simplified planning and major amendments. These hearings are subject to a minimum 30-day public notice and public comment period prior to and after the hearings. This subsection revises the previous 30-day notice requirements for these hearings in that the notice requirements in Texas Water Code (TWC) §16.053(h) are no longer applied to these hearings to reduce the costly expense associated with a large mailout and posting notice in a newspaper. RWPGs may continue to provide newspaper notices and notify additional entities at their discretion and in accordance with their bylaws. Subsection (g)(3) is revised to clarify that materials must be posted on the RWPG's website.

New subsection (h) specifies public meeting and hearing requirements for pre-planning public meetings to obtain input on development of the next RWP and holding hearings on the Initially

Prepared Plan (IPP) or making revisions to RWPs based on interregional conflict resolutions. These hearings are subject to public notice provision in TWC §16.053(h), including posting notice in a newspaper and providing a mailed notice to certain entities as specified in the rule. This subsection also requires notification of all adjacent RWPGs, which is an additional requirement not included in TWC §16.053(h). This subsection changes the 60 day "public comment" period on the IPP to a 60 day "written comment" period on the IPP. This will change the comment period of state and public agencies from 90 to 60 days in order to simplify the deadlines to submit written comment to the RWPGs. TWDB's 120-day comment period is not altered by this rule revision. The subsection also clarifies that if more than one hearing is held by an RWPG on the IPP, the notice and public comment periods apply to the date of the first hearing. The subsection adds in the requirements for RWPG hearings on making revisions to their RWPs based on interregional conflict resolutions. The requirements for this type of hearing are specified in TWC §16.053(h) but were not previously addressed in rule. The requirement to post notice for these meetings in the *Texas Register* is also removed. Subsection (h)(8) is added to clarify the minimum posting requirements for materials other than IPPs.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to simplify regional water planning public notice requirements and remove redundant references in the rule related to notice requirements.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed the a standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under the authority of Texas Water Code §16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code,

Chapter 2007. The specific purpose of this rule is to simplify regional water planning public notice requirements and remove redundant references in the section to notice requirements.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the rule would be in effect, the rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### PUBLIC COMMENTS

The following written comment was received from the Texas Press Association.

##### *Comment*

The Texas Press Association asserted that the requirement to post notice in a newspaper for declarations of intent to pursue simplified planning and major amendments are set forth in statute and citizens would no longer be informed of these meetings if the requirement to post notice in newspapers are removed.

##### *Response*

The requirement to post notice in a newspaper set forth in statute (TWC §16.053(h)(8)) is not applicable for hearings regarding declarations of intent to pursue simplified planning and major amendments. At a minimum, notices for these types of hearings are still required to be posted on the website for the RWPG and the Secretary of State website. The proposed rules continue to require newspaper notices for such meetings specified in statute as requiring newspaper notices. No change has been made in response to this comment.

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of the Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code §16.053, which provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute.

Texas Water Code §16.053 is affected by this rulemaking.

##### §357.21. *Notice and Public Participation.*

(a) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is exempted from the Public Information Act, Texas Government Code, Chapter 552. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

(b) Each RWPG shall create and maintain a website that they will use to post public notices of all its full RWPG, committee, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with this section.

(c) Each RWPG shall provide a means by which it will accept written public comment prior to and after meetings. The RWPGs must also allow oral public comment during RWPG meetings and hearings.

(d) Each RWPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RWPG activities.

(e) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines and any additional notice requirements provided in subsections (g)(1) - (3) and (h) of this section or any additional notice requirements in the RWPG bylaws, to all voting and non-voting RWPG members and any person or entity who has requested notice of RWPG activities. Notice must also be provided to the following:

(1) if a recommended or Alternative WMS that is located outside of the RWPG is being considered, the RWPG where the recommended or Alternative WMS is located must also receive notice of any meeting or hearing where action or public input may be taken on the recommended or Alternative WMS.

(2) for hearings on declarations of intent to pursue simplified planning, if an RWPG shares a water supply source, WMS, or WMSP with another RWPG, the RWPG declaring intent to pursue simplified planning must notify the RWPG with shared source, WMS, or WMSP.

(3) each project sponsor of an infeasible WMS or WMSP must be provided notice of any meeting or hearing where action may be taken on the infeasible WMS or WMSP.

(f) At a minimum, all meeting and hearing notices must be posted to the RWPG website and on the secretary of state website and must include:

- (1) the date, time, and location of the meeting;
- (2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments will be received from the members and public.

(g) In addition to subsections (a) - (f) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available on the RWPG website at least three days prior to and seven days following the meeting when the planning group will take the following actions:

(A) regular RWPG meetings and any RWPG committee or subcommittee meetings;

(B) approval of requests for funds from the Board;

(C) amendments to the scope of work or budget included in the regional water planning grant contract between the political subdivision and TWDB;

(D) approval of revision requests for draft population projections and Water Demand projections;

(E) adoption of the IPP;

(F) approval to submit a request to EA for approval of an Alternative WMS substitution or to request an EA determination of a minor amendment;

(G) declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning;

(H) initiation of major amendments to RWPs and adoption of major amendments following a public hearing on the amendment;

(I) approval of replacement RWPG members to fill voting and non-voting position vacancies; and

(J) any other RWPG approvals required by the regional water planning grant contract between TWDB and the political subdivision.

(2) at a minimum, notice must be provided at least 14 days prior to the meeting, written comment must be accepted for 14 days prior to the meeting and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available on the RWPG website for a minimum of seven days prior to and 14 days following the meeting, when the planning group will take the following actions:

(A) approval to submit revision requests to officially adopted Board population and Water Demand projections;

(B) approval of process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs;

(C) approval to submit the Technical Memorandum;

(D) adoption of the final RWP;

(E) approval to substitute Alternative WMSs; and

(F) adoption of minor amendments to RWPs.

(3) at a minimum, notice must be provided at least 30 days prior to the hearing, written comment must be accepted for 30 days prior to and following the date of the hearing and considered by the RWPG members prior to taking the associated action, and meeting ma-

terials must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the hearing, when the planning group will receive input from the public on the following items:

(A) declarations to pursue simplified planning; and

(B) major amendments to RWPs.

(h) when holding pre-planning public meetings to obtain public input on development of the next RWP, holding hearings on the IPP, or making revisions to RWPs based on interregional conflict resolutions, in addition to the requirements of subsection (e) of this section, the following additional public notice and document provisions must be met per TWC §16.053(h):

(1) notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.

(2) at a minimum, notice must be provided at least 30 days prior to the meeting or hearing.

(3) written comments to be accepted as follows:

(A) written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(B) at least 60 days following the date of the public hearing on an IPP.

(4) if more than one hearing on the IPP is held, the notice and comment periods apply to the date of the first hearing.

(5) additional entities to be notified by mail under this subsection include:

(A) each adjacent RWPG;

(B) each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(C) each county judge of a county located in whole or in part in the RWPA;

(D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and

(E) each Retail Public Utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

(F) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission.

(6) the public hearings shall be conducted at a central location readily accessible to the public within the regional water planning area.

(7) RWPGs shall make copies of the IPP available for public inspection at least 30 days before the required public hearing by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA. The locations of such copies shall be included in the public hearing notice. For distribution of the IPP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate public library and location

in the county courthouse to ensure maximum accessibility to the public during business hours. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(8) Any additional meeting materials associated with meetings in this subsection must be made available on the RWPG website for a minimum of seven days prior to and 30 days following the meeting or hearing.

(i) All notice periods given are based on calendar days.

(j) Each RWPG shall include a statement in their draft and final adopted RWPs regarding the RWPG's conformance with this section.

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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Ashley Harden

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Texas Water Development Board

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For further information, please call: (512) 463-7686

