

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §83.72

The Texas Commission of Licensing and Regulation (Commission) adopts emergency rulemaking amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 83, §83.72, Responsibilities of Beauty Culture Schools, regarding the Cosmetology Program. This emergency adoption is necessary to correct errors in the previously-amended (and adopted) rule text in order to protect the public health, safety, and welfare. The effective date for these amendments is June 30, 2020.

The emergency rule amendment is referred to as the "emergency rule."

EXPLANATION OF AND JUSTIFICATION FOR THE EMERGENCY RULE

The rules under 16 TAC Chapter 83, Cosmetologists, implement Texas Occupations Code, Chapter 1602, Cosmetologists, and Chapter 1603, Regulation of Barbering and Cosmetology.

On February 18, 2020, the Commission adopted amendments to Chapter 83 to implement necessary changes as required by House Bill (HB) 2847, 86th Legislature, Regular Session (2019), and recommendations from the Cosmetology Advisory Board's workgroups to reduce regulatory burdens and provide more clarity to the industry by using updated and standardized terminology. Section 83.72 was one of the rules amended by this rulemaking, and the section was amended effective March 15, 2020.

Due to a clerical error, the amended text of §83.72 incorporated into the Texas Administrative Code is not the text that was published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 42) and adopted by the Commission on February 18, 2020. As a result, incorrect requirements are present in the currently published text of §83.72.

The errors in the text of §83.72(w)(9) - (10) present imminent peril to the public health, safety, or welfare requiring adoption of the emergency rule on fewer than 30 days' notice. The errors include changing the required equipment for Beauty Culture Schools offering the esthetician and manicurist curriculum standards. These errors remove requirements for some sanitation equipment such as autoclaves, posing a risk to public health and safety. Additionally, the errors include requirements for unnecessary equipment which should not be involved in the instruction for the esthetician or manicurist curricula, representing unnecessary costs and presenting a risk of confusion for instructors and students. This emergency rule reverts the requirements back to those that were intended to be changed as a result of the adop-

tion on February 18, 2020, ensuring the correct standards are in place.

FUTURE RULEMAKING

Under Texas Government Code §2001.034, the emergency rule may be effective for 120 days, and may be renewed once for an additional 60 days. The Commission intends to propose this or a similar rule under the normal rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted section.

STATUTORY AUTHORITY

The emergency rule is adopted with abbreviated notice and with an expedited effective date under Texas Government Code §§2001.034(a), 2001.036(a)(2).

The emergency rule is adopted under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the emergency rule are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the emergency rule.

§83.72. *Responsibilities of Beauty Culture Schools.*

- (a) Each establishment must have a copy of the current law and rules book.
- (b) Each establishment is responsible for compliance with the health and safety standards of this chapter.
- (c) Notify the department of any alterations of a cosmetology establishment's floor plan.
- (d) The certificate of curriculum approval shall be posted in a conspicuous place in the school. A current syllabus and lesson plan for each course shall be maintained by the school and be available for inspection.
- (e) Unless the context clearly indicates otherwise, when used in this section the term "student-instructor" shall mean a student permit holder who is enrolled in an instructor course of a beauty culture school.
- (f) Schools must have at least one licensed instructor on duty for each 25 students in attendance, including evening classes. A school may not enroll more than three student-instructors for each licensed instructor teaching in the school. The student-instructor shall at all times work under the direct supervision of the licensed instructor and may not service clients, but will concentrate on teaching skills. A licensed instructor must be physically present during all curriculum standard activities. No credit for instructional hours can be granted to a cosmetology student unless such hours are accrued under the supervision of a licensed instructor.

(g) Schools offering distance education must:

- (1) obtain department approval before offering a course;
- (2) provide students with the educational materials necessary to fulfill course requirements; and
- (3) comply with the curriculum standards in §83.120(d) by limiting distance education to instruction in theory.

(h) Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits shall be displayed in alphabetical order by last name, then alphabetical order by first name, and, if more than one student has the same name, by student permit number.

(i) Schools may use a time clock to track student hours and maintain a daily record of attendance or schools may use credit hours.

(j) Schools using time clocks shall post a sign at the time clock that states the following department requirements:

- (1) Each student must personally clock in/out for himself/herself.
- (2) No credit shall be given for any times written in, except in a documented case of time clock failure or other situations approved by the department.
- (3) If a student is in or out of the facility for lunch, he/she must clock out.

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

(k) Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hour reports and supporting documents however only school owners and school designees, including licensed instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder, including student-instructors, may electronically submit information to the department under this chapter.

(l) A school must properly account for the hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student credit that is not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum standards, withdraws, or is terminated:

- (1) daily record of attendance;
- (2) the following documents if a time clock is used:
 - (A) time clock record(s);
 - (B) time clock failure and repair record(s); and
 - (C) field trip records in accordance with §83.120(e)(5);

(3) all other relevant documents that account for a student's credit under this chapter.

(m) Schools using time clocks shall, at least one time per month submit to the department an electronic record of each student's accrued clock hours in a manner and format prescribed by the department. A school's initial submission of clock hours shall include all hours accrued at the school. Delayed data submission(s) are permitted only upon department approval, and the department shall prescribe the period of time for which a school may delay the electronic submission

of data, to be determined on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(n) Schools using credit hours shall, at the end of the course or module or if the student drops or withdraws, submit to the department an electronic record of each student's accrued credit hours in a manner and format prescribed by the department.

(o) Schools changing from clock hours to credit hours or from credit hours to clock hours must apply with the department for approval, on a department approved form, prior to making any changes.

(p) Successful completion of 1 credit hour is equal to 37.5 clock hours. This equivalency will be used for conversion between clock hours to credit hours or credit hours to clock hours and the department must periodically assess this equivalency conversion to ensure it is an acceptable industry standard.

(q) Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend class for 30 consecutive days.

(r) Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.

(s) All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curricula required under §83.120.

(t) A private cosmetology school or post-secondary school may provide cosmetology instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and department rules.

(u) Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this chapter.

(v) Schools must ensure that guest presenters possess the necessary knowledge and teaching ability to present a curriculum standard topic and that a licensed instructor is present during the guest presenter's classroom teaching.

(w) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct students enrolled at the school:

- (1) if using a time clock to track student hours, one day/date formatted computer time clock;
- (2) desks and chairs or table space for each student in attendance;
- (3) multi-media equipment;
- (4) a dispensary containing a sink with hot and cold running water and space for storage and dispensing of supplies and equipment;
- (5) a suitable receptacle for used towels/linens;
- (6) covered trash cans in lab area; and

(7) wet disinfectant soaking container, large enough to fully immerse tools and implements.

(8) If offering the operator curriculum standards the following equipment must be available in adequate number for student use:

- (A) shampoo bowl and shampoo chair;
- (B) hair drying equipment or professional hand-held hair dryers;
- (C) cold wave rods;
- (D) thermal iron (electric or non-electric);
- (E) styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic);
- (F) mannequin with sufficient hair, with table or attached to styling station;
- (G) professional hand clippers;
- (H) manicure table and stool;
- (I) facial chair or bed;
- (J) lighted magnifying glass;
- (K) dry sanitizer; and
- (L) wet disinfectant soaking containers, large enough to fully immerse tools and implements.

(9) If offering the esthetician curriculum standards the following equipment must be available in adequate number for student use:

- (A) facial chair or bed;
- (B) lighted magnifying glass [~~heat processor, hand-held hair dryer, heat cap, or therapeutic light~~];
- (C) woods lamp [~~cold wave rods~~];
- (D) dry sanitizer [~~thermal iron (electric or non-electric)~~];
- (E) steamer machine [~~styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic)~~];
- (F) brush machine for cleaning [~~mannequin with sufficient hair, with table or attached to styling station~~];
- (G) vacuum machine [~~professional hand clippers~~];
- (H) high frequency machine for disinfection, product penetration, stimulation [~~professional hand held dryer~~];
- (I) galvanic machine for eliminating encrustations, product penetration [~~manicure table and stool~~];
- (J) paraffin bath and paraffin wax [~~facial chair or bed~~];
- (K) mannequin head; and
- (L) wet disinfectant soaking containers, large enough to fully immerse tools and implements.

(10) If offering the manicure curriculum standards the following equipment must be available in adequate number for student use:

- (A) an autoclave, dry-heat sterilizer or ultra-violet sanitizer [~~facial chair~~];

(B) complete manicure table with light [~~lighted magnifying glass~~];

- (C) client chair [~~woods lamp~~];
- (D) student stool or chair [~~dry sanitizer~~];
- (E) whirlpool foot spa or foot basin [~~steamer machine~~];
- (F) electric nail file [~~brush machine for cleaning~~];
- (G) UV light curing system [~~vacuum machine~~];
- (H) paraffin bath and paraffin wax [~~high frequency machine for disinfection, product penetration, stimulation~~];
- (I) air brush system; and [~~galvanic machine for eliminating encrustations, product penetration~~];
- (J) wet disinfectant soaking containers. [~~paraffin bath and paraffin wax~~];

(11) If offering the esthetician/manicure curriculum standards, the equipment required for the esthetician curriculum standards as listed in paragraph (9); and the equipment required for the manicure curriculum standards as listed in paragraph (10); including a wax warmer and paraffin warmer for each service, in adequate number for student use.

(12) If offering the eyelash extension curriculum standards; the following equipment must be available in adequate number for student use:

- (A) facial bed or massage table that allows the consumer to lie completely flat;
- (B) stool or chair;
- (C) lamp;
- (D) mannequin head;
- (E) wet disinfectant soaking containers; and
- (F) dry sanitizer.

(x) Cosmetology schools shall display in the school, in a conspicuous place clearly visible to the public:

- (1) a copy of the school's most recent inspection report issued by the department; and
- (2) a sign, acceptable to the department, regarding human trafficking information as required by Texas Occupations Code, Chapter 1602, §1602.408.

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

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

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

SUBCHAPTER A. TELEMEDICINE

22 TAC §174.5

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §174.5, effective July 5, 2020, at 12:00 a.m.

On March 13, the Governor of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 19, 2020, the Texas Governor issued a waiver suspending the strict enforcement of §174.5(e)(2)(A) which generally prohibits the utilization of telemedicine to prescribe scheduled drugs for the treatment of chronic pain. The waiver was issued in order to protect public health and curb the spread of COVID-19 by providing patients access to schedule drugs needed to ensure on-going treatment of chronic pain and avoid potential adverse consequences associated with the abrupt cessation of pain medication. The waiver was extended on April 9, 2020, and again on May 8, 2020. The waiver expired at 11:59 p.m. on June 5, 2020. Upon expiration of the waiver, the Board adopted, on an emergency basis, amendments to 22 TAC §174.5, which is set to expire at 11:59 p.m. on July 4, 2020.

Therefore, the emergency amendment to §174.5(e) is immediately necessary to help the state's physicians, physician assistants and other health care professionals continue to mitigate the risk of exposure to COVID-19 and provide necessary medical services to related to chronic pain management with controlled substances for patients. Pursuant to the Governor's declaration of disaster issued on March 13, 2020, related to COVID-19, physicians determining whether to utilize telemedicine medical services for the treatment of chronic pain with scheduled medications, must give due consideration to additional important parameters to ensure the safety of the patient.

The emergency amendment would allow physicians to utilize telemedicine to issue refill prescriptions for scheduled medications to established chronic pain patients if the physician determines that such telemedicine treatment is needed due to the COVID-19 pandemic.

Pursuant to Section 2001.034 and 2001.036(a)(2) of the Texas Government Code, the amendment is adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The emergency amendment shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter, pursuant to Section 2001.034 of the Texas Government Code.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Another statute affected by this rule is Chapter 111 of the Texas Occupations Code.

§174.5. *Issuance of Prescriptions.*

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, of Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment for Chronic Pain. For purposes of this rule, chronic pain has the same definition as used in §170.2(4) of this title (relating to Definitions).

(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless:

(i) a patient is an established chronic pain patient of the physician and is seeking telephone refill of an existing prescription, and the physician determines that such telemedicine treatment is needed due to the COVID-19 pandemic; or

(ii) the treatment is otherwise allowed under federal and state law.

(B) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by subsection (A)(i) or (ii) above, the patient's medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(C) A physician, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with scheduled drugs as permitted by subsection (A)(i) or (ii) above, shall give due consideration to factors that include: date of the patient's last in-person visit, patient co-morbidities, and occupational-related COVID risks. These are not the sole, exclusive, or exhaustive factors a physician should consider under this rule.

(D) The emergency amendment of this rule effective July 5, 2020, at 12:00 a.m. shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) Treatment for Acute Pain. For purposes of this rule, acute pain has the same definition as used in §170.2(2) of this title. Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.

~~[(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law.]~~

~~[(B) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.]~~

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

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 303. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code (TAC), Chapter 303, Preadmission Screening and Resident Review (PASRR), amended §§303.303(c), 303.502(a), and 303.703(b) in response to COVID-19. These amended sections ensure local intellectual and developmental disability authorities (LIDDAs), local mental health authorities (LMHAs), and local behavioral health authorities (LBHAs) who hire new staff can continue providing essential services to eligible residents of nursing facilities. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses continue providing essential services. The Commission accordingly finds that an imminent peril

to the public health, safety, and welfare of the state requires immediate adoption of emergency amendments in 26 TAC Chapter 303, Subchapters C, E, and G.

To protect designated residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency amendments to allow new employees at a LIDDA, LMHA, or LBHA to meet revised training requirements before conducting PASRR evaluations and resident reviews, providing habilitation coordination, or providing service coordination for transition planning. Rather than attend HHSC in-person PASRR trainings, which are suspended during the COVID-19 pandemic to comply with social distancing requirements, new employees must complete HHSC computer-based training and local training from the LIDDA, LMHA, or LBHA. LIDDAs also currently do not have access to HHSC-approved person-centered thinking trainings. For new employees who have not attended HHSC-developed in-person PASRR trainings or HHSC-approved person-centered thinking training, the LIDDA, LMHA, or LBHA must ensure a supervisor, team lead, or quality monitoring staff person who has successfully completed the training reviews and signs off on the employee's work.

SUBCHAPTER C. RESPONSIBILITIES

26 TAC §303.303

STATUTORY AUTHORITY

These emergency rule amendments are adopted under Government Code §2001.034; §531.0055; and §531.021 and under Human Resources Code §32.021. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new amendments implement Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§303.303. *Qualifications and Requirements for Staff Person Conducting a PE or Resident Review.*

(a) A LIDDA must ensure a PE or resident review is conducted by a person who:

(1) is a QIDP; or

(2) has one of the following qualifications and at least one year of experience working directly with persons with intellectual disability or other developmental disabilities:

(A) RN;

(B) LCSW;

(C) LPC;

(D) LMFT;

(E) Licensed Psychologist;

(F) APRN; or

(G) Physician.

(b) An LMHA or LBHA must ensure a PE or resident review is conducted by a person who is a:

- (1) QMHP-CS;
- (2) RN;
- (3) LCSW;
- (4) LPC;
- (5) LMFT;
- (6) Licensed Psychologist;
- (7) APRN;
- (8) Physician; or
- (9) PA.

(c) A LIDDA, LMHA, and LBHA must:

(1) before a staff person conducts a PE or resident review, ensure the staff person:

(A) successfully completes: [receives HHSC-developed training about how to conduct a PE and resident review; and]

(i) the HHSC computer-based training, An Overview of the PASRR Process; and

(ii) job-related training from the LIDDA, LMHA, or LBHA; and

(B) demonstrates competency in completing a PE and resident review; ~~and~~

(2) maintain documentation of the training received by a staff person who conducts a PE or resident review; ~~and~~ [.]

(3) ensure a supervisor, team lead, or quality monitoring staff person who has successfully completed the HHSC in-person training regarding PEs reviews and signs off on PEs and resident reviews completed by an employee hired on or after February 1, 2020.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3135



SUBCHAPTER E. HABILITATION COORDINATION

26 TAC §303.502

STATUTORY AUTHORITY

These emergency rule amendments are adopted under Government Code §2001.034; §531.0055; and §531.021 and under Human Resources Code §32.021. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice

and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new amendments implement Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§303.502. Required Training for a Habilitation Coordinator.

(a) A LIDDA must ensure ~~[a habilitation coordinator completes the following training before providing habilitation coordination]:~~

(1) a habilitation coordinator, before providing habilitation coordination, successfully completes [training that addresses]:

(A) local training that addresses:

(i) [(A)] appropriate LIDDA policies, procedures, and standards;

(ii) [(B)] this chapter and other HHSC rules relating to the provision of specialized services;

(iii) [(C)] HHSC's IDD PASRR Handbook;

(iv) [(D)] developing and implementing an HSP;

(v) [(E)] conducting assessments, service planning, coordination, and monitoring;

(vi) [(F)] providing crisis prevention and management;

(vii) [(G)] presenting community living options using HHSC-developed materials and forms, and offering educational opportunities and informational activities about community living options;

(viii) [(H)] arranging visits to community providers;

(ix) [(I)] accessing specialized services for a designated resident;

(x) [(J)] the rights of a person with an intellectual disability, including the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, as described in the Persons with an Intellectual Disability Act, Texas Health and Safety Code, Chapter 592 and the *Your Rights in Local Authority Services* booklet; and

(xi) [(K)] advocacy for individuals with ID or DD; and

(B) the HHSC computer-based training, An Overview of the PASRR Process;

(2) a supervisor, team lead, or quality monitoring staff person who has successfully completed the HHSC in-person training regarding habilitation coordination reviews and signs off on work completed by a habilitation coordinator hired on or after February 1, 2020 [person-centered thinking training approved by HHSC]; and

(3) a supervisor, team lead, or quality monitoring staff person who has successfully completed a person-centered thinking training approved by HHSC reviews and signs off on HSPs completed by a habilitation coordinator hired on or after February 1, 2020, if the habilitation coordinator has not previously completed the person-centered thinking training approved by HHSC [all HHSC-developed training related to PASRR].

(b) A LIDDA must:

(1) ensure a habilitation coordinator demonstrates competency in providing habilitation coordination; and

(2) maintain documentation of the training received by habilitation coordinators.

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

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SUBCHAPTER G. TRANSITION PLANNING

26 TAC §303.703

STATUTORY AUTHORITY

These emergency rule amendments are adopted under Government Code §2001.034; §531.0055; and §531.021 and under Human Resources Code §32.021. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new amendments implement Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§303.703. Requirements for Service Coordinators Conducting Transition Planning.

(a) A LIDDA must ensure that a service coordinator complies with 40 TAC Chapter 2, Subchapter L (relating to Service Coordination for Individuals with an Intellectual Disability), including documenting in the transition plan the frequency and duration of service coordination while the designated resident is in the nursing facility.

(b) A LIDDA must ensure [that a service coordinator who conducts transition planning completes the following training before providing service coordination to a designated resident]:

(1) a service coordinator who conducts transition planning successfully completes the following training before providing service coordination [training that addresses]:

(A) local training that addresses:

(i) [~~(A)~~] this chapter;

(ii) [~~(B)~~] HHSC's IDD PASRR Handbook;

(iii) [~~(C)~~] the process for making a referral for relocation services, the role of a relocation specialist, and housing options;

(iv) [~~(D)~~] the role of the MCO service coordinator for a nursing facility resident who wants to transition to the community;

(v) [~~(E)~~] services available through Texas Medicaid State Plan and all home and community based services programs for individuals with ID or DD, including but not limited to, access to nursing, durable medical equipment and supplies, and transition assistance supports;

(vi) [~~(F)~~] developing and implementing a transition plan for a designated resident;

(vii) [~~(G)~~] presenting community living options using HHSC-developed materials and forms, and offering educational opportunities and informational activities about community living options; and

(viii) [~~(H)~~] the rights of a person with an intellectual disability, including the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, as described in the Persons with an Intellectual Disability Act, Texas Health and Safety Code, Chapter 592 and the *Your Rights in Local Authority Services* booklet; and

(B) the HHSC computer-based training, An Overview of the PASRR Process;

(2) a supervisor, team lead, or quality monitoring staff person who has successfully completed the HHSC in-person training regarding service coordination for transition planning reviews and signs off on work completed by a service coordinator hired on or after February 1, 2020 [person-centered thinking training approved by HHSC]; and

(3) a supervisor, team lead, or quality monitoring staff person who has successfully completed a person-centered thinking training approved by HHSC reviews and signs off on transition plans completed by a service coordinator hired on or after February 1, 2020, if the service coordinator has not previously completed the person-centered thinking training approved by HHSC [all HHSC-developed training related to PASRR].

(c) A LIDDA must:

(1) ensure a service coordinator who conducts transition planning demonstrates competency in conducting transition planning; and

(2) maintain documentation of the training received by service coordinators who conduct transition planning.

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

Filed with the Office of the Secretary of State on June 29, 2020.

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