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

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. GENERAL ADMINISTRATION

The Texas Department of Information Resources (department) proposes the repeal of 1 Texas Administrative Code Chapter 201 (Chapter 201), §§201.1 - 201.9, concerning General Administration, and the replacement of it with a new Chapter 201, §§201.1 - 201.10. This repeal of Chapter 201 in its entirety allows the department to eliminate unnecessary rules, substantially revise existing rules for efficiency and clarity, and enable renumbering. The department further proposes a new Chapter 201 to accomplish this task.

The proposed repeal of and new Chapter 201 are the result of the department's statutory quadrennial rule review of this chapter and the Texas Regulatory Efficiency Office (TREO) regulatory efficiency review pursuant to Texas Government Code Chapter 465. The notice of rule review was published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7811).

In this repeal and replacement, the department has renumbered all currently existing sections as described below. Unless otherwise specified by this preamble, the text of the new proposed rule intended to replace the current corresponding section revises the language and mimics the initial rule intent without explicitly mirroring the existing text of Chapter 201 for which the department is proposing a repeal in this rulemaking action.

The department proposes the creation of a new §201.1, concerning Definitions, and incorporating the definitions for "ADR," "Alternative Dispute Resolution Policy," "Alternative Dispute Resolution Procedures," "Board," "Contract Value," "Department," "Emergency Procurement," Executive Director," "HUB," "Interested Parties," "Major Outsourced Contract," "Protest Officer," "Petitioner," "Procedures," and "Protesting Party." This section streamlines the rule by collectively defining terms of art used across multiple rule sections in a singular section.

The department proposes to renumber §201.1 as §201.2. This section establishes vendor protest rules in alignment with the requirements of Texas Government Code § 2155.076. The department proposes replacing the repealed text with proposed language more closely aligned to the Texas Comptroller of Public Accounts' regulations regarding vendor protests. Furthermore, the department proposes allowing for the creation of standard operating procedures for vendor protests to be posted to the department's website.

The department proposes renumbering §201.2 as §201.3. This section addresses the adoption of the Texas Comptroller of Public Accounts' historically underutilized business rules by state agencies required by Texas Government Code § 2161.003. The department revises the currently existing language to align its rules with the veteran-owned business changes adopted by the Texas Comptroller of Public Accounts and updates existing citations.

The department proposes renumbering §201.3 as §201.4. This section addresses the Texas Government Code § 2171.1045 requirement for state agencies to adopt rules consistent with the Office of Vehicle Fleet Management's management plan relating to the assignment and use of agency vehicles. The department proposes removing the purpose and intent subsection currently found at subsection (a). The existing subsections are then relettered for correctness.

The department proposes renumbering §201.4 as §201.5. This section addresses several statutorily required rules as described by this paragraph. The department proposes subsection (a) to streamline and clarify current language regarding compliance waivers. The department proposes subsection (b), which incorporates by reference the requirements of Texas Government Code Chapter 661, Subchapters A and A-1, and establishes by rule the operation of the department's sick leave pool and family leave pool programs. The department proposes subsection (c) to establish procedural requirements for the department's acceptance of a donation. The department proposes subsection (d) to establish the department's strategic direction and incorporates by reference the statutory requirements found at Texas Government Code § 2054.040 and § 2054.041. The department proposes subsection (e) to incorporate by reference the conflicts of interest codified at Texas Government Code § 2054.552 and § 2261.252(a) and establishes by rule any additional department-specific conflicts of interest in contracting as required by Texas Government Code § 2054.522(c).

The department proposes the renumbering of the current §201.5 to §201.6. As required by Texas Government Code §§ 2054.033 - 2054.0337, this section establishes the advisory committees created by these statutory sections and proposes rules necessary to govern each advisory committee as directed by Texas Government Code § 2054.033(f). The proposal further addresses the Sunset Advisory Commission recommendations, codified by House Bill 1500 [89th Legislative Session (Regular)], to establish specific additional advisory committees necessary to address the department's mission, goals, and duties.

The department proposes renumbering the current §201.6 as §201.7. As proposed, the section addresses the requirements of Texas Government Code § 2054.521 to establish by rule any contract constituting a major outsourced contract beyond the statutory definition and detailing a nonexhaustive list of what type of amendment to a major outsourced contract constitutes a significant statewide impact. The proposed rules delegate contract

approval authority to the Executive Director or their designee for specific types of contracts, including codifying the delegation and requirement to notify the board authorized at a previous open meeting. They also authorize the Executive Director or their designee to execute all departmental contracts upon receipt of the necessary approvals.

The department proposes renumbering the current §201.7 as §201.8. As proposed, this section addresses the statutory requirements of Texas Government Code Chapters 2008 and 2009 regarding the department's use of negotiated rulemaking and alternative dispute resolution, respectively.

The department proposes renumbering the current §201.8 to §201.9. As proposed, this section establishes the process by which a member of the public can petition the department to adopt a rule as required by Texas Government Code § 2001.021 and specifies the formal procedural requirements necessary in the event of such a petition.

The department proposes renumbering the current §201.9 to §201.10. This proposed section specifically identifies the reports required of an institution of higher education following September 1, 2014, as made necessary by Texas Government Code § 2054.1211, and removes outdated references to cybersecurity reporting overseen by Texas Cyber Command following the conclusion of the 89th Legislative Session (Regular).

There is no economic impact on rural communities or small businesses, or micro-businesses as a result of enforcing or administering the amended rule as proposed.

The new chapter applies to state agencies, specifically the department, and, in one section, institutions of higher education. DIR prepared the assessment of the impact of the proposed changes on institutions of higher education resulting from the repeal and replacement of §201.10 in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code § 2054.121(c). DIR submitted the proposed amendments to ITCHE for their review and to assist in DIR's preparation of the statutory impact statement. The proposed new rule does not expand institution of higher education reporting requirements beyond that which is already required. After consulting with ITCHE, DIR has determined there is no impact to institutions of higher education as a result of the proposed rule.

Virginia K. Hoelscher, General Counsel, has determined there will be no fiscal impact upon state agencies, institutions of higher education, and local government during the first five years following the proposed repeal and replacement of this chapter. The department is statutorily required to adopt rules regarding its administration as an executive branch agency, including but not limited to rules overseeing its leave pool programs, vendor protest procedures, assignment of department vehicles, and other regulatory functions, which are codified within the confines of Chapter 201. The rules as repealed and their proposed replacements do not differ significantly, except to the extent statutory changes have required the department to do so, which would not result in an economic impact resulting from the regulatory changes. The efficiencies created by defining collective terms, simplifying language, incorporating references by statute and removing outdated citations, and streamlining existing requirements are a benefit not resulting in a fiscal impact.

For each year of the first five years following the adoption of the newly created Chapter 201, Virginia K. Hoelscher has determined there are no anticipated additional economic costs to persons or small businesses required to comply with the proposed rules.

Pursuant to Texas Government Code § 2001.0221, the department provides the following Governmental Growth Impact Statement for the proposed repeal and replacement of Chapter 201. The department has determined the following:

1. The proposed rules both eliminate and create a government program due to the repeal and replacement of this section. Section 201.5(a) establishes the department's sick leave and family leave pool programs required by Texas Government Code Chapter 661. This program is statutorily created, and the department must make rules to establish this program within the department.

2. Implementation of the proposed rules does not require the creation or elimination of employee positions. No additional employees are required nor employees eliminated to implement the rules as repealed and replaced.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. There is no fiscal impact as Chapter 201 addresses general department administrative requirements in alignment with statutory regulatory requirements. The proposed repeal and replacement of these rules creates efficiencies within the department's administration.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules create a new section consolidating all term of art definitions used in Chapter 201 into a singular location. These definitions were previously administered in several different sections of the rule.

6. The proposed rules repeal the existing Chapter 201 and replace it with a new Chapter 201 intended to revise existing rules and create efficiencies in the department's regulatory functions.

7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability. The rules apply to general department administration and have limited applicability to entities that are not the department.

8. The proposed rules positively affect the state's economy in that they reduce duplication between rule and statute, enhance efficiencies, and streamline department regulations. The proposed rules do not adversely affect the state's economy.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, P.O. Box 13564, Austin, Texas 78711-3564, or to rules.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

1 TAC §§201.1 - 201.9

The repeal of the existing Chapter 201 is proposed pursuant to: Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2155.076, which requires state agencies to adopt rules consistent with the Texas Comptroller of Public Accounts' vendor protest resolution rules codified at 34 Texas Administrative Code §1.72 and include standards for maintaining documentation about the purchasing process used in event of a protest; Texas Government Code § 2161.003, which requires state agencies to adopt by rule the Texas Comptroller of Public Accounts' rules regarding Historically Un-

derutilized Businesses; Texas Government Code § 2171.1045, which requires state agencies to adopt rules consistent with the Office of Fleet Vehicle Management's management plan; Texas Government Code § 2054.552(d), which requires the department to implement by rule employee requirements regarding contractual conflicts of interest; Texas Government Code §§ 2054.033 - 2054.0337, which requires the department to adopt rules establishing several advisory committees and their administration; Texas Government Code § 2054.521, which requires the department to define by rule a major outsourced contract; Texas Government Code Chapter 2008, which allows state agencies to participate in negotiated rulemaking; Texas Government Code § 2009.051, which allows a state agency engaging in alternative dispute resolution to adopt such procedures by rule; Texas Government Code § 2001.021, which requires a state agency to prescribe by rule the form for a petition to adopt a rule; and Texas Government Code § 2054.1211, which requires the department to establish by rule which, if any, of the statutory reports an institution of higher education must complete after September 1, 2015.

No other code, article, or statute is affected by this proposal.

§201.1. Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures.

§201.2. Historically Underutilized Business Program.

§202.3. Assignment of Department Vehicles.

§201.4. Board Policies.

§201.5. Advisory Committees.

§201.6. Contract Approval Authority and Responsibilities.

§201.7. Negotiated Rulemaking and Alternative Dispute Resolution.

§201.8. Plans and Reports Required of Institutions of Higher Education.

§201.9. Petition for the Adoption of a Rule.

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

Filed with the Office of the Secretary of State on August 31, 2026.

TRD-202603779
Virginia Hoelscher
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 694-8312

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1 TAC §§201.1 - 201.10

The proposed new Chapter 201 is proposed pursuant to: Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2155.076, which requires state agencies to adopt rules consistent with the Texas Comptroller of Public Accounts' vendor protest resolution rules codified at 34 Texas Administrative Code §1.72 and include standards for maintaining documentation about the purchasing process used in event of a protest; Texas Government Code § 2161.003, which requires state agencies to adopt by rule the Texas Comptroller of Public Accounts' rules regarding Historically Underutilized Businesses; Texas Government Code § 2171.1045, which requires state agencies to adopt rules consistent with the Office of Fleet Vehicle Management's management plan; Texas Government Code § 2054.552(d), which requires the department to implement by rule employee requirements regarding contractual conflicts of interest; Texas Government Code §§ 2054.033 - 2054.0337, which requires the department to adopt rules establishing several advisory committees and their administration; Texas Government Code § 2054.521, which requires the department to define by rule a major outsourced contract; Texas Government Code Chapter 2008, which allows state agencies to participate in negotiated rulemaking; Texas Government Code § 2009.051, which allows a state agency engaging in alternative dispute resolution to adopt such procedures by rule; Texas Government Code § 2001.021, which requires a state agency to prescribe by rule the form for a petition to adopt a rule; and Texas Government Code § 2054.1211, which requires the department to establish by rule which, if any, of the statutory reports an institution of higher education must complete after September 1, 2015.

§201.1. Definitions.

When used in this chapter, the following words and phrases have the following meanings unless the context clearly indicates otherwise.

(1) ADR--Alternative Dispute Resolution.

(2) Alternative Dispute Resolution Policy--The Alternative Dispute Resolution Policy with Guidelines for State Agencies promulgated by the State Office of Administrative Hearings.

(3) Alternative Dispute Resolution Procedures--Any procedure or combination of procedures described by Texas Civil Practice & Remedies Code Chapter 154.

(4) Board--The department's governing body.

(5) Contract Value--As defined by 34 Texas Administrative Code §20.25(b)(13).

(6) Department--Texas Department of Information Resources.

(7) Emergency Procurement--As defined by 34 Texas Administrative Code §20.25(b)(21) or subsequent successive regulation adopted by the Texas Comptroller of Public Accounts.

(8) Executive Director--The department's executive director.

(9) HUB--Historically Underutilized Business.

(10) Interested Parties--As defined by 34 Texas Administrative Code §1.72(a)(6).

(11) Major Outsourced Contract--A contract the department executes with entities other than this state or a political subdivision of the state that:

(A) is entered into pursuant to authority granted by:

(i) Texas Government Code Chapter 2054, Subchapters I or L; or

(ii) Texas Government Code Chapter 2170; or

(B) exceeds the monetary thresholds established by section 201.7 of this chapter.

(12) Petitioner--Interested person petitioning the department to adopt a rule pursuant to 1 Texas Administrative Code §201.8.

(13) Protest Officer--The person authorized by the Procedures to review and make decisions regarding a protest.

(14) Procedures--The Vendor Protest Procedures posted to the department's website.

(15) Protesting Party--A vendor who submitted a written response to the solicitation they are protesting in accordance with the requirements of this chapter and the Procedures.

§201.2. Vendor Protests.

(a) The department shall maintain Procedures detailing protest requirements on its website.

(b) Vendor protests are subject to the requirements of this section and the Procedures.

(1) Any protesting party may file a protest with the Protest Officer. Protests must be made in writing and received by the Protest Officer within 10 business days after the protesting party knows or should have known of the grounds upon which the protesting party bases their protest.

(2) The protesting party must mail or deliver copies of the protest to the department and other interested parties.

(c) Protests must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by the department that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest;

(6) any other specific requirements enumerated by the Procedures; and

(7) a statement that copies of the protest have been mailed or delivered to the department and all other identifiable interested parties.

(d) In the event of a timely protest received under this section where the department has not yet awarded all resulting contracts under the solicitation, the department will address the solicitation or award of the contracts as follows.

(1) Except as provided by paragraph (2) below, the department may not proceed further with the solicitation or award of the contract unless the executive director, after consultation with the Protest Officer, makes a written determination that the contract must be awarded without delay to protect the best interest of the department.

(2) For a solicitation issued pursuant to the department's authority under Texas Government Code § 2157.068 or Texas Government Code Chapter 2170 that may result in multiple awarded contracts, the department may proceed with the solicitation or award of contracts without a written determination by the executive director.

(e) The department shall resolve protests in accordance with this subsection.

(1) The Protest Officer may settle and resolve a protest at any time before the protest is submitted on appeal to the executive director or their designee. The Protest Officer may solicit written responses to the protest from other interested parties.

(2) If the protest is not resolved by mutual agreement, the Protest Officer will issue a written determination resolving the protest.

(A) If the Protest Officer determines the department did not violate a statutory or regulatory provision, they shall inform the protesting party and other interested parties by letter, which must set forth the reasons for the determination.

(B) If no contract has been awarded and the Protest Officer determines a violation of any statutory or regulatory provision has occurred, they shall inform the protesting party and other interested parties by a letter detailing the reasons for the determination and the appropriate remedy.

(C) If one or more contracts have been awarded and the Protest Officer determines a violation of any statutory or regulatory provision has occurred, they shall inform the protesting party and other interested parties by a letter detailing the reasons for the determination and may include an order that declares one or more of the contracts void.

(f) The protesting party may appeal a protest determination made by the Protest Officer to the executive director or their designee.

(1) A protesting party must submit their appeal in writing to the department's Executive Director no later than 10 business days after the date of the determination and include all information required by the Procedures.

(2) If the department does not receive an appeal from the protesting party within ten business days after the date of the Protest Officer's determination, then the Protest Officer's determination is considered the department's final administrative action on the protest.

(3) The protesting party must mail or deliver to the department and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(4) The executive director or their designee's review of a protesting party's appeal is limited to a review of the Protest Officer's determination and will not review issues newly raised in the appeal or that are otherwise not pertinent to the Protest Officer's determination.

(5) The executive director or their designee may either issue a written decision on the appeal or refer the appeal to the board for consideration at a regularly scheduled open meeting. The decision of the executive director or their designee, or the board upon referral of the decision to the board by the executive director, is considered the department's final administrative action on the protest.

(g) The department will not consider a protest or appeal that is not filed timely unless the protesting party shows good cause for delay or the executive director or their designee determines the appeal raises issues that are significant to department procurement practices or procedures in general.

(h) The department will maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the department retention schedule.

§201.3. HUB Program.

Pursuant to Texas Government Code § 2161.003, the department adopts by reference the HUB Program rules established by the Texas Comptroller of Public Accounts, including the provisions relating to veteran-owned businesses (VetHUB), as found at 34 Texas Administrative Code Chapter 20, Subchapter D, or any successor rules.

§201.4. Department Vehicle Assignment.

(a) The department may assign a vehicle to specific field employees or make a department vehicle available for checkout by employees conducting official department business.

(b) The department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis if the department determines the assignment is critical to the department's mission and needs. The department must document this determination in writing and maintain such in alignment with the required retention series.

§201.5. Board Policies.

(a) Compliance Waivers.

(1) The Board delegates authority to the executive director to grant a requesting state agency a compliance waiver from a department enforced administrative rule, statewide standard, or other Board policy.

(2) A state agency may request a compliance waiver under this section by having the administrative head of the agency or their designee submit a written waiver request in the manner and form required by the department that clearly demonstrates:

(A) any performance or cost advantages to be gained; and

(B) that the overall economic interests of the state are best served by granting the compliance waiver.

(3) The executive director will notify the board once the department has determined the appropriate disposition for a compliance waiver request.

(b) Leave Pool Programs.

(1) The board delegates authority to the executive director to establish and administer a sick leave pool program for department employees in accordance with Texas Government Code Chapter 661, Subchapter A.

(A) The executive director is appointed as the sick leave pool administrator but may designate another department employee to serve as the pool administrator under the executive director's supervision.

(B) The pool administrator shall prescribe procedures relating to the operation of the sick leave pool program.

(2) The board delegates authority to the executive director to establish and administer a family leave pool program for department employees in accordance with Texas Government Code Chapter 661, Subchapter A-1.

(A) The executive director is appointed as the family leave pool administrator but may designate another employee of the department to serve as the pool administrator under the executive director's supervision.

(B) The pool administrator shall prescribe procedures relating to the operation of the family leave pool program.

(c) Donations to the department.

(1) The department may accept a donation or gift offered by a private donor if the department determines it is in the public interest to accept the gift or donation as a result of:

(A) an emergency, including both natural and manmade disasters; or

(B) a technology benefit including education, assessment or innovation.

(2) If the department accepts a private donation or gift, the department must spend any monetary donation in accordance with the department's own mission and duties and deposit it in the state treasury unless statutorily exempted.

(3) If a donation exceeds $10,000, the department and the donor must execute a donation agreement:

(A) describing the donation, including a determination of its value;

(B) attesting the donor is the rightful owner of the donation;

(C) establishing any and all donor restrictions and all department-required terms and conditions for use of the donation;

(D) indemnifying the department as to the donor's rightful ownership of the donation prior to the department's acceptance of the donation;

(E) preventing potential claims that could result from the department's use of the donation;

(F) describing how the donation will further the department's mission or duties, provides a significant public benefit, and is not made in an effort to influence action on the part of the department;

(G) providing the donor's contact information;

(H) disclaiming department responsibility for tax-related representations made by the donor;

(I) signed by the executive director and the donor or the donor's authorized representative.

(4) The Board delegates authority to the executive director to coordinate all donations.

(A) The executive director may accept donations not exceeding $250,000 in value on the department's behalf. The executive director or their designee must report each donation accepted by the department to the Board at the open meeting following the department's acceptance of the donation. If a donation exceeds $250,000 in value, the Board must approve the donation before the department may accept it.

(B) If either the board or the executive director of the department accepts a donation, it must be recorded in the minutes for an open meeting of the Board and reflect the action taken, including;

(i) name of the donor;

(ii) a description of the donation;

(iii) a statement of the purpose of the donation; and

(iv) if the donation is less than $250,000, the executive director's report of acceptance, or, if the proposed donation is greater than $250,000, the Board's vote during the open meeting.

(d) Department Strategic Direction.

(1) The board shall set a strategic direction for the department by:

(A) establishing subcommittees for each major program area to monitor department activities, major outsourced contracts, audit resource needs, and service offerings; and

(B) evaluating and approving new initiatives for or categories of services offered by the department under the department's various programs.

(2) The board shall carry out the oversight and evaluation duties required by Texas Government Code § 2054.040 and § 2054.041.

(e) Conflicts of Interest.

(1) Department officers and employees shall comply with the conflict of interest, disclosure, and contract prohibitions prescribed by Texas Government Code § 2054.552, § 2054.022, and § 2261.252, which are adopted by reference. A department employee who violates these requirements is subject to disciplinary action including dismissal or removal as required by Texas Government Code § 2054.022(e).

(2) The department shall train staff in the requirements of subparagraph (1) and incorporate ethical and conflict of interest disclosure requirements into the contract management guide and the department's internal policies.

§201.6. Advisory Committees.

(a) All advisory committee members shall:

(1) Comply with all statutory and policy ethical requirements of their employing organization;

(2) Disclose to the department any actual or potential conflicts of interest relating to matters before the committee; and

(3) Abstain from advisory committee discussions on issues related to their conflict of interest.

(b) The State Strategic Plan for Information Resources Management Advisory Committee advises the department on the development of the State Strategic Plan for Information Resources Management, pursuant to Texas Government Code Chapter 2054, Subchapter E, and reviews the prepared draft before its distribution to the board.

(1) This advisory committee shall develop a strategic direction of what the future of computing and telecommunications technology is for state government as a whole;

(2) The committee is comprised of at least nine and not more than 21 members including:

(A) At least one employee of a state agency of any size;

(B) At least one employee of a state agency with 500 or fewer full-time employees;

(C) two information resources managers or a designee from Texas state agencies other than a university system or institution of higher education as defined by Texas Education Code § 61.003;

(D) one representative from a state university system or institution of higher education as defined by Texas Education Code § 61.003;

(E) one member of the public;

(F) one Texas local government organization representative knowledgeable about information resources or telecommunications;

(G) three representatives from the information resources or telecommunications industry;

(H) one federal agency representative knowledgeable about information resources or telecommunications.

(3) Advisory committee members must have a demonstrated ability to think strategically and work towards consensus building in a committee setting.

(4) The executive director shall recommend and the board shall appoint advisory committee members by no later than November 30 of every odd-numbered year with a term to expire on November 30 of the following odd-numbered year.

(A) The Executive Director may not recommend a greater number of representatives from the private sector than the public sector.

(B) Once the board approves the membership of the advisory committee, the department may not add any additional members without board approval.

(C) If the department is unable to identify an appropriate candidate in any of the categories outlined by paragraph (b)(2)(A) - (H) of this subsection, the Executive Director may select and recommend to the board additional candidates from paragraph (b)(2)(A) - (H) of this subsection.

(5) The advisory committee shall:

(A) appoint a presiding officer from among its members, who shall report to the board at least once during the advisory committee's term; and

(B) meet at least once during its term.

(6) The advisory committee requires at least a majority of its members in attendance to convene a meeting.

(c) The Customer Advisory Committee provides strategic, customer driven guidance to improve the department's development, delivery, and performance of statewide technology services, serves as a formal communication channel between the department and its customers, and provides a forum for discussion of customer issues.

(1) This advisory committee shall:

(A) Provide experience-based input on DIR services and programs.

(B) Elevate customer and constituent perspectives into agency decision making.

(C) Advise on priorities that balance innovation with efficiency and fiscal responsibility.

(D) Support continuous improvement of service delivery, usability, and customer experience.

(E) Provide input on reports, policies, and other deliverables required of DIR.

(2) The advisory committee is composed of a cross-section of DIR customers who use DIR services and programs and must include at least the below members:

(A) Three employees of state agencies with fewer than 150 employees;

(B) One employee of a state agency with fewer than 500 employees;

(C) One employee of a state agency with greater than 500 employees;

(D) One representative from a state university system or institution of higher education as defined by Texas Education Code § 61.003;

(E) One representative from a school district;

(F) One representative from a local government as defined by Texas Government Code § 2054.003(9);

(G) One representative of an organization that is an eligible customer under Texas Government Code § 2054.0525 and not represented by another member of the advisory committee;

(H) One representative specializing in telecommunications matters who serves as an employee of a governmental entity; and

(I) One representative from a state agency of any size who has knowledge of DIR and subject matter expertise in one of the below disciplines:

(i) Finance;

(ii) Contracting and procurement;

(iii) Legal; or

(iv) Digital accessibility.

(3) Advisory committee members must have a demonstrated ability to think strategically and to work in a consensus-driven committee setting. Committee members must meet the following qualifications:

(A) Have professional experience, knowledge, or subject-matter expertise in information technology, digital services, governance, customer experience, accessibility, cybersecurity, procurement, or service delivery;

(B) Demonstrate the ability to think strategically and consider the statewide impact of technology initiatives beyond the interests of a single organization;

(C) Be willing and able to actively participate in committee meetings, working groups, and related engagement activities;

(D) Have the authority or appropriate organizational standing to represent their sector and communicate committee insights back to relevant stakeholders.

(4) The executive director shall recommend and the board shall appoint advisory committee members by no later than November 30 of every odd-numbered year with a term to expire on November 30 of the following odd-numbered year.

(A) The department may recommend to the Board candidates not listed by (c)(2) of this section that represent customers who use department services.

(B) A member of this advisory committee may also be a member of another department advisory committee with the approval of the board.

(C) If the department is unable to identify an appropriate candidate in any of the categories outlined by paragraph (a)(2)(A) - (I) of this subsection, the Executive Director may select and recommend to the board additional candidates from paragraph (a)(2)(A) - (I) of this subsection.

(D) Once the board approves the membership of the advisory committee, the department may not add any additional members without board approval.

(5) The advisory committee shall:

(A) appoint a presiding officer from among its members;

(B) report to the department's board at least once per fiscal year by way of a presentation by the presiding officer or their designee; and

(C) meet at least once a fiscal year.

(6) This advisory committee does not require a quorum to convene a meeting.

(d) The Information Technology Commodities Procurement Advisory Committee provides a platform for customers, including small and mid-sized state agencies, to share feedback with the department on its information technology commodities program.

(1) The advisory committee shall provide advisory input to the department that strengthens cooperative IT procurement by promoting transparency, efficiency and value, while ensuring smaller agencies have engagement with the cooperative purchasing process.

(2) The advisory committee shall include at least the below members:

(A) Three employees of state agencies with fewer than 150 employees;

(B) One employee of a state agency with fewer than 500 employees;

(C) One employee of a state agency with greater than 500 employees;

(D) One representative from a state university system or institution of higher education as defined by Texas Education Code § 61.003; and

(E) One representative from either:

(i) a local government as defined by Texas Government Code § 2054.003(9); or

(ii) an assistance organization as defined by Texas Government Code § 2175.001.

(3) The executive director appoints advisory committee members for a staggered two-year term with their term ending on the second anniversary of their date of appointment.

(A) At the department's discretion, the executive director may reappoint the member.

(B) There are no term limits upon membership.

(4) Advisory committee members must possess experience or knowledge in information technology procurement, contract management, technology deployment, cybersecurity, or related technical or legal fields.

(5) The board delegates the authority to appoint members of this advisory committee to the executive director.

(6) The advisory committee shall:

(A) appoint a presiding officer from among its members;

(B) report to the department's board at least once per fiscal year by way of a presentation by the presiding officer or their designee; and

(C) meet at least once a fiscal year.

(7) This advisory committee does not require a quorum to convene a meeting.

(e) The Data Management Advisory Committee provides input to the department's Chief Data Officer to assist in the development and maturation of the state's data management program and offer collaborative opportunities for state agency Data Management Officers.

(1) The advisory committee shall meet the goals specified by Texas Government Code § 2054.0332(c).

(2) The advisory committee is composed in alignment with Texas Government Code § 2054.0332(b).

(3) Advisory committee members must have:

(A) the experience required by Texas Government Code § 2054.137; or

(B) otherwise be a Data Management Officer designated by a state agency.

(4) The advisory committee's presiding officer is the department's Chief Data Officer. At least once per year, the Chief Data Officer shall report to the Board on matters before the advisory committee.

(5) The advisory committee shall meet at least once per fiscal year and does not require a quorum to convene a meeting.

§201.7. Contract Authority and Responsibilities.

(a) The executive director or their designee shall present the below contracts and amendments to the board for final approval:

(1) any award, including of a major outsourced contract, with a contract value exceeding $1,000,000;

(2) an amendment to a contract the value for which will either:

(A) exceed $1,000,000; or

(B) brings the total contract value to over $1,000,000;

(3) A major outsourced contract or any amendment to a major outsourced contract if the amendment has significant statewide impact including:

(A) Contract renewals; and

(B) Vendor changes;

(4) Any other contract or amendment at the executive director's discretion.

(b) The board delegates authority to the executive director to approve a purchase request or a contract listed in subsection (a) of this section for an emergency procurement.

(c) The board delegates contract approval authority to the executive director or their designee for:

(1) All contracts not listed in paragraph (a) of this subsection.

(2) Purchases from contracts authorized under Government Code Chapter 2170 with a total contract value of less than $1,000,000. If a purchase is made in this way, then the executive director or their designee shall report the purchase at the first open meeting following the purchase.

(3) Purchase requests or contracts listed in paragraph (a) of this subsection for an emergency procurement or to avoid undue material additional cost to the state. If a purchase is made subject to this authority, then the executive director or their designee shall report the purchase request or contract executed in such a way to the board chair prior to its execution.

(d) The board delegates authority to the executive director to execute all contracts for the department. The executive director may delegate this authority to their designee, as necessary.

(e) The department will present to the board for its approval a contract plan for the next fiscal year that outlines the department's anticipated contracting actions exceeding $100,000. The department will share any updates to this contract plan with the board at the executive director's discretion.

(f) The department shall subject every contract identified by the department as a major outsourced contract to enhanced contract and performance monitoring.

(1) The department shall regularly present information about contracts subject to this type of monitoring to the board.

(2) The department will immediately notify the board of any serious issue or risk to a contract subject to this type of monitoring.

§201.8. Negotiated Rulemaking and Alternative Dispute Resolution.

(a) If the department anticipates a proposed rule is likely to be complex, controversial, or affect disparate groups, the department may propose engaging in negotiated rulemaking in accordance with Texas Government Code Chapter 2008 with the department's General Counsel or their designee serving as the department's convener to:

(1) Assist in identifying persons likely to be affected by the proposed rule;

(2) Consider whether negotiated rulemaking is feasible or will unreasonably delay the rulemaking; and

(3) Recommend to the department whether to proceed in accordance with Texas Government Code Chapter 2008 and Texas Government Code § 2054.121(c).

(b) The department encourages fair and expeditious resolution of disputes through ADR procedures.

(1) Upon receipt of notice of a dispute, the Executive Director, in consultation with the department's General Counsel, shall determine whether an alternative dispute resolution procedure is an appropriate method for resolving the dispute.

(2) If ADR is appropriate, the department will collaborate with the claimant to select and implement an appropriate procedure consistent with the Alternative Dispute Resolution Policy.

§201.9. Petition for the Adoption of a Rule.

(a) A petitioner may request the department adopt a rule by submitting their petition electronically as prescribed by the department on its website, by mail, or hand delivered to the department and include:

(1) The petitioner's name, address, organization or affiliation, if any, and the name of the person or entity upon whose behalf the petition is filed if different than the individual submitting the petition;

(2) A brief statement about why a new rule or a rule change is necessary, including information regarding the public good served by the proposed rule and any effect upon those who would be required to comply with the proposed rule;

(3) As described below, the estimates, if known, and the facts, assumptions, and methodology used to prepare them:

(A) An estimate of the fiscal impact, if known, to state and local government as a result of enforcing or administering the proposed rule;

(B) An estimate of the economic impact, if known, on persons required to comply with the proposed rule; and

(C) Whether there may be an effect on local employment;

(4) The proposed text of the new or amended rules;

(5) A list of individuals, organizations, or affiliations that may be interested in or affected by the proposed rule, if known; and

(6) If any of the above required information is not included in or with the petition, a reason why the petitioner has not provided the required information.

(b) A petition is submitted on the date the department receives it.

(c) Upon receipt of a petition complying with the requirements of this section, the department will deny or accept the petition, in whole or in part, within 60 days from the date of submission.

(1) If the department denies the petition, it will notify the petitioner in writing and state the reason(s) for the denial.

(2) If the department accepts the petition in whole, the department will refer the accepted petition to agency staff to initiate the rulemaking process.

(3) If the department accepts the petition for rulemaking in part, the department will notify the petitioner in writing of the parts denied, state the reason(s) for the denial, and refer the accepted portions to agency staff to initiate the rulemaking process.

(d) The department may alter the petitioner's proposed text to conform to agency policy decisions, style, and format as necessary.

(e) Prior to the end of each fiscal year, the department will present to the Board a report of all petitions received during that fiscal year. If the department did not receive any petitions in a fiscal year, it is not required to submit a report unless requested by the board.

§201.10. Plans and Reports Required of Institutions of Higher Education.

(a) An institution of higher education shall prepare and submit the following plans and reports to the department:

(1) Reports required by or collected pursuant to the requirements of Texas Government Code § 2054.052;

(2) Information Resources Managers' training and continuing education compliance reports as set forth in Texas Government Code § 2054.076;

(3) Information Resources Deployment Review established by Texas Government Code § 2054.0965 subject to the reporting limitation in Texas Education Code § 51.406;

(4) Network configuration information as set forth in Texas Government Code § 2054.203;

(5) Accessibility Survey established by Texas Government Code § 2054.464.

(b) The department will coordinate with the Information Technology Council for Higher Education regarding the preparation or submission of such plans and reports by institutions of higher education and may allow for the use of existing data where available and applicable.

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

Filed with the Office of the Secretary of State on August 31, 2026.

TRD-202603780
Virginia Hoelscher
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 694-8312

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low-Income Housing Tax Credits (LIHTC).

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous adoption of the subchapters in 10 TAC Chapter 11, the Qualified Allocation Plan, in order to better address the requirements of Tex. Gov't Code Ch. 2306, Subchapter DD.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESS OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The proposed repeal does not contemplate or authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2026 and October 9, 2026, to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Dominic DeNiro, QAP Public Comments, or by email to dominic.deniro@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time OCTOBER 9, 2026.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY. The proposed repeal is made to pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.1. General.

§11.2. Program Calendar for Housing Tax Credits.

§11.3. Housing De-Concentration Factors.

§11.4. Tax Credit Request, Award Limits, and Increase in Eligible Basis.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)).

§11.6. Competitive HTC Allocation Process.

§11.7. Tie Breaker Factors.

§11.8. Pre-Application Requirements (Competitive HTC Only).

§11.9. Competitive HTC Selection Criteria.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

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

Filed with the Office of the Secretary of State on September 4, 2026.

TRD-202603885
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

STATUTORY AUTHORITY. The proposed repeal is made to pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.101. Site and Development Requirements and Restrictions.

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

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Bobby Wilkinson
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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The proposed repeal is made to pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.201. Procedural Requirements for Application Submission.

§11.202. Ineligible Applicants and Applications.

§11.203. Public Notifications (§2306.6705(9)).

§11.204. Required Documentation for Application Submission.

§11.205. Required Third Party Reports.

§11.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)).

§11.207. Waiver of Rules.

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

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Texas Department of Housing and Community Affairs
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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The proposed repeal is made to pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.301. General Provisions.

§11.302. Underwriting Rules and Guidelines.

§11.303. Market Analysis Rules and Guidelines.

§11.304. Appraisal Rules and Guidelines.

§11.305. Environmental Site Assessment Rules and Guidelines.

§11.306. Scope and Cost Review Guidelines.

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

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Texas Department of Housing and Community Affairs
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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

STATUTORY AUTHORITY. The proposed repeal is made to pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.901. Fee Schedule.

§11.902. Appeals Process.

§11.903. Adherence to Obligations. (§2306.6720).

§11.904. Alternative Dispute Resolution (ADR) Policy.

§11.905. General Information for Commitments or Determination Notices.

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

§11.907. Carryover Agreement General Requirements and Required Documentation.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER F. STATE HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1008

STATUTORY AUTHORITY. The proposed repeal is made to pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.1001. General.

§11.1002. Program Calendar for State Housing Tax Credits Associated with Competitive HTC Applications.

§11.1003. State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

§11.1004. Procedural Requirements for Requests for State Housing Tax Credits Associated with Competitive HTC Applications.

§11.1005. Required Documentation for State Housing Tax Credit Request Submission Associated with Competitive HTC Applications.

§11.1006. State Housing Tax Credits Underwriting and Loan Policy Associated with Competitive HTC.

§11.1007. State Housing Tax Credits Selection Criteria Associated with Competitive HTC Applications.

§11.1008. State Housing Tax Credits for Tax-Exempt Bond Developments.

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

Filed with the Office of the Secretary of State on September 4, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 475-3959

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CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: add new definitions; clarify multiple definitions; update the Program Calendar; modify seafood requirements for grocery store tiebreaker eligibility; add Pharmacies as a new tiebreaker so Development Sites have more options; update Mandatory Amenity Requirements; require Development Staff to provide a 45-day notice to tenants for changes in supportive services; and to significantly reduce the reduce wordcount for readability.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tex. Gov't Code §2306.67022. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed rule changes do not require additional future legislative appropriations.

4. The rule changes will not result in any increases or decreases in fees.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed rule has sought to clarify Application requirements. Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2026 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022.

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FELXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between $50,000 and $60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the proposed rule for which the economic impact of the rule may range from $480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of $10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are approximately 1,376 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. The proposed rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a takings by the Department. Therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. Other than the fees mentioned in section a4 above, there is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between $50,000 and $60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held September 18, 2026, and October 9, 2026 to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Dominic DeNiro, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Dominic DeNiro, QAP Public Comments, or by email to dominic.deniro@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time October 9, 2026.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.1. General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive Housing Tax Credits (HTC), the State Housing Tax Credit, and the issuance of Determination Notices for non-Competitive Housing Tax Credits. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is responsible for this activity and pursuant to Tex. Gov't Code, Chapters 171 and 233, the Department is assigned responsibility for the adoption of rules relating to the State Housing Tax Credit. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP). All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title collectively constitute the QAP. Unless otherwise specified, this section, §§11.2 - 11.4 of this title, and Subchapters B - E of this chapter also apply to non-Competitive HTCs and Direct Loans. Applicants must certify that they have familiarized themselves with the relevant rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program, except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter. This chapter is subject to change based on any changes in applicable rule or law.

(b) Due Diligence and Applicant Responsibility.

(1) Department staff may make available information and informal guidance, but staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The *Multifamily Programs Procedures Manual* is not a rule. In all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. After staff provides guidance, additional information may mean the issue itself continues to develop. Until confirmed through final action of the Board, staff guidance is merely an aid and an Applicant continues to assume full responsibility for its actions, including any due diligence to research, confirm, and verify any data, opinions, interpretations, or other information.

(2) Developments with Existing LURAs. Applicants submitting an Application for a Development with existing LURA(s) must include copies, identify potential conflict(s), and, if applicable, consult with staff regarding how to resolve conflicts with the new LURA if awarded. Resolving such issues relating to the existing LURA(s) and for Direct Loans the existing Contract may not coincide with the timing needed for a new award.

(c) Reasonable Accommodation. See §1.1 of this title regarding requests for reasonable accommodation.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any terms not capitalized or defined in this document have the meaning as defined in Tex. Gov't Code Chapter 2306, Code §42, the HOME or NHTF Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Achievable Affordable Rent--The rent that a Unit subject to rent and income restrictions can reasonably be expected to achieve at the subject Property, which may be less than the applicable maximum program rent. The Market Analyst or Underwriter will determine the Achievable Affordable Rent based on actual rents achieved by Comparable Units at LURA restricted Developments in the PMA that achieved Stabilized Occupancy at any time during the five years preceding the date of the Market Study. The adjustments must account for differences in net rentable square footage, functionality, overall condition, geographic location (proximity to primary employment centers, amenities, services, and travel patterns), age, Unit amenities, utility structure, Common Area amenities, and the percent of market Units. If no other LURA restricted Developments exist within the PMA, the Market Analyst may use other LURA restricted Developments within a 10-mile radius to support their conclusion.

(2) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes, into a building which will be used, in whole or in part, for residential purposes. At least 75% of the original building must remain at completion of the proposed Development. Ancillary non-residential buildings (clubhouse, leasing office, amenity center) may be newly constructed outside the walls of the existing building or as detached buildings on the Site. Adaptive Reuse Developments will be considered as New Construction.

(3) Administrative Deficiency--Information requested by Department staff to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide missing information in the original Application or pre-application; or assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Staff may issue Administrative Deficiencies at any time while the Application or pre-application is under consideration by the Department, including at any time after award or allocation and throughout the Affordability Period. A matter may begin as an Administrative Deficiency but later become a Material Deficiency.

(A) Staff will treat the following as Administrative Deficiencies curable through the Deficiency process only if the issues, when taken as a whole, do not constitute a Material Deficiency:

(i) For Applications that are substantially complete, a minor quantity of missing signatures, documents, or similar clerical matters, the curing of which will not create change within the Application, unless the missing documentation must have existed as of the appropriate deadline and did not, or is otherwise not susceptible to resolution. For Competitive HTC or Direct Loan Applications, this may include documents submitted to substantiate points claimed in the Application only if:

(I) the documents can be readily identified to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points; or

(II) for scoring items predicated solely on third-party data, characteristics inherent to the proposed Site, or are otherwise not influenced by the Applicant, the Application can clearly establish eligibility existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and submitting the documents does not necessitate additional changes in the Application to qualify for the points.

(ii) Inconsistencies that exist between facts presented in the Application and/or its supporting documentation. The Department will not treat a discrepancy between the requested points and the points supported by the Application as an inconsistency if the facts presented within the Application are otherwise consistent.

(iii) At the Department's sole discretion, additional information that is necessary to assist in the review of the Application.

(B) The following issues are not Administrative Deficiencies curable through the Deficiency process:

(i) Any matter that will materially change the Application, except for matters that must be addressed in accordance with 10 TAC §11.1(d), in which case staff will direct the Applicant to resolve the inconsistency in the manner that creates the least change within the Application. Under no circumstance can the resolution of an Administrative Deficiency increase the Application's score from the initial submission.

(ii) Changes to the Application submitted only to qualify for points claimed in the Application.

(iii) Except at staff's written request, changes to the Application that alter the amount of Housing Tax Credits or Direct Loan requested.

(C) In all cases, staff and the Board make the final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information.

(4) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative, or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(5) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or pursuant to Code §42(i)(1) or federal regulation, and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period is in the LURA or other deed restriction. The Department has the authority to extend the Affordability Period for Developments that fail to meet program requirements.

(6) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined in Code §42(b).

(7) Applicant--Any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation.

(8) Application Acceptance Period--That period during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date of Application submission.

(9) Award Letter--A document that may be issued to an awardee of a Direct Loan before the issuance of a Contract.

(10) Bank Trustee--A federally insured bank with the ability to exercise trust powers in Texas.

(11) Bathroom--either:

(A) Full Bathroom--A portion of a Unit that is self-contained and includes all components of a Half Bathroom, plus a shower or bathtub (including a shower curtain rod if applicable) and towel bar. Rehabilitation (excluding Reconstruction) Developments in which Full Bathroom configurations are not being altered are exempt, except as needed to comply with accessibility requirements.

(B) Half Bathroom--A portion of a Unit that is self-contained with a door and that has at least one toilet, wall-hung toilet paper holder, ventilation fan, electrical outlets, wall mirror, sink, and a faucet. Rehabilitation (excluding Reconstruction) Developments in which Half Bathroom configurations are not being altered are exempt, except as needed to comply with accessibility requirements.

(12) Bedroom--A portion of a Unit, including a den, study, or other similar space, which is no less than 100 square feet; has no width or length less than eight feet; is self-contained with either a door or the Unit contains a second level sleeping area of 100 square feet or more; has at least one window that provides exterior access; and has at least one closet that is not less than two feet deep and three feet wide and high enough to accommodate five feet of hanging space. Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered and Supportive Housing Developments are exempt from the bedroom and closet width, length, and square footage requirements.

(13) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(14) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to Code §42(h)(1)(C) and U.S. Treasury Regulations §1.42-6.

(15) Carryover Allocation Agreement--A document issued by the Department, and executed by the Owner, pursuant to §11.907 of this title.

(16) Cash Flow--The funds available from operations after paying all expenses and debt service required.

(17) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(18) Code--The Internal Revenue Code of 1986, as amended, together with any applicable regulations, rules, rulings, revenue procedures, information statements, or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(19) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register.*

(20) Commitment Notice (also referred to as Commitment)--An agreement issued pursuant to §11.905(a) of this title setting forth the Department's terms and conditions for Competitive HTCs (not the Direct Loan Program).

(21) Commitment of Funds--Occurs after Board approval and Contract execution.

(22) Common Area--All enclosed or covered space not included in Net Rentable Area.

(23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, geographic location, age, Unit amenities, utility structure, and common amenities.

(24) Competitive Housing Tax Credits--Referred to as Competitive HTC. Tax credits available from the State 9% Housing Credit Ceiling.

(25) Compliance Period--The period of 15 taxable years, beginning with the first taxable year of the credit period, pursuant to Code §42(i)(1).

(26) Contract--A legally binding agreement between the Owner and the Department for Direct Loan Program funds.

(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state, or local governmental agency.

(28) Contractor--See General Contractor.

(29) Control (including the terms "Controlling," "Controlled by," and "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) below. Multiple Persons may have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, and each stockholder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder.

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, the Audit Committee chair, the Board chair, and anyone identified as the executive director or equivalent.

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries.

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(30) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of this chapter.

(31) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter.

(32) Determination Notice--A notice issued by the Department to the Owner of a Tax-Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits pursuant to the Code §42(m)(1)(D).

(33) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(34) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member, or any subcontractor that performs Developer Services or provides guaranties.

(35) Developer Services--A scope of work relating to the duties, activities, and responsibilities for pre-development, development, design coordination, and construction oversight including, but not limited to: site selection and contracting; identifying and negotiating funding sources; filing applications; securing permits and approvals; selecting and contracting with service providers, including the General Contractor; construction oversight; consultative services; guaranties, financial, or credit support if a Related Party or Affiliate; and any other customary or similar activities determined by the Department.

(36) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project as defined by Code §42(g) financed under a common plan. If consisting of multiple buildings located on scattered sites, it may contain only Low-Income Units. (§2306.6702(a)(6)).

(A) A Development is scattered site if the Property where buildings or amenities are located does not share a common boundary and there is no accessible pedestrian route that the Development Owner controls (transportation in a motor vehicle is not an accessible route).

(B) A Development for which several parcels comprise the Development Site is contiguous if separated only by a private road controlled by the Owner, or a public road or similar barrier where the Owner has a written agreement with the public entity for at least the term of the LURA stating that the accessible pedestrian route will remain. The written agreement with the public entity must be in place by the earlier of the 10% Test for Competitive HTC, the Determination Notice date for a Tax-Exempt Bond Development issued by the Department, Cost Certification for Tax-Exempt Bond Developments where the Determination Notice is issued administratively, or the execution of the Direct Loan Contract, as applicable.

(37) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application or post award documents.

(38) Development Owner (see "Owner")

(39) Development Site--(see "Site")

(40) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management, or continuing operation of the Development, including any Development Consultant and Guarantor.

(41) Direct Loan--Funds provided through lending programs available through the Department for multifamily development (excluding the tax-exempt bond program).

(42) Educational Provider--A school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(43) Economically Distressed Area--An area that is in a municipality and census tract that has a median household income that is 75% or less of the statewide median household income or, if not a municipality, a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Site must be within the jurisdiction of the political subdivision.

(44) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter (relating to Operating Feasibility). EGI is the sum total of Pro Forma Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(45) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(46) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(47) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(48) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter.

(49) Existing Residential Development--Any Site which contains any type of existing residential dwelling at any time as of the beginning of the Application Acceptance Period.

(50) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) The date specified in the LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(51) First Lien Lender--A lender whose lien has first priority.

(52) Forward Commitment--the issuance of a Commitment of Housing Tax Credits from the State Housing Credit Ceiling for the calendar year following the year of issuance.

(53) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor counts as a General Contractor (and any fees payable to it counts as fees to the General Contractor) in the scenarios described in subparagraphs (A) or (B) below:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract; or

(B) If more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors.

(54) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Owner and that Controls the partnership. The manager or managing member of a limited liability corporation is, for the purposes of these rules, the functional equivalent of a general partner.

(55) Governing Body--The elected or appointed body of public or tribal officials responsible for the enactment, implementation, and enforcement of local rules for its respective jurisdiction.

(56) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments, and other similar entities.

(57) Gross Capture Rate (GCR)--Defined in §11.303(d)(10)(F) of this chapter.

(58) Gross Demand--Defined in §11.303(d)(9)(E)(ii) of this chapter.

(59) Gross Program Rent--The Department's published maximum applicable rent limits.

(60) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(61) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs, and contingency.

(62) HOME Match Eligible Unit--A Unit in the Development that would qualify as eligible for Match under 24 CFR Part 92 and CPD Notice 97-03 or subsequent HUD guidance.

(63) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to an Owner as provided for in Code.

(64) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits listed initially in a Carryover Allocation Agreement or Determination Notice, then later in one or more IRS Form(s) 8609.

(65) HTC Development--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(66) Initial Affordability Period--The Compliance Period or such longer period elected by the Owner as the minimum period for which the Development will be restricted under the LURA.

(67) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(68) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household.

(69) Managing General Partner--See General Partner.

(70) Market Analysis--An evaluation of the economic conditions of supply, demand, and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(71) Market Analyst--A professional satisfying the qualifications in §11.303(c) of this chapter.

(72) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after making adjustments to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, geographic location, age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(73) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency, including

(A) inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements; or

(B) multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole, would create a need for substantial re-review of the Application.

(74) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department that provides guidance. The Manual is not a rule, rather is only good faith assistance.

(75) National Standards for the Physical Inspection of Real Estate (NSPIRE)--As developed by the Real Estate Assessment Center of HUD.

(76) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid.

(77) Net Program Rent--Defined in §11.302(d)(1)(A)(v) of this chapter.

(78) Net Rentable Area (NRA)--Unit space available exclusively to the tenant and heated and cooled by a mechanical HVAC system, measured to the outside of either

(A) the studs of a Unit or to the middle of walls in common with other Units or

(B) if the construction does not use studs, the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA, although only if it shares a wall with the living space for Developments using Direct Loan funds. NRA

does not include areas not actually available to the tenants for their furnishings nor the enclosing walls of such areas, including common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, or patios.

(79) Non-HTC Development--Any Development not utilizing Housing Tax Credits or Exchange funds.

(80) Notice of Funding Availability (NOFA)--A notice issued by the Department announcing funding availability for multifamily rental programs.

(81) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(82) Off-Site Construction--Improvements up to the Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(83) Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development and is responsible for performing under the allocation or Commitment. (§2306.6702(a)(7)).

(84) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, or other organization or entity of any nature whatsoever, and includes any group of Persons acting in concert toward a common goal, including the individual members of the group.

(85) Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) A record of such an impairment; or

(C) Is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(86) Physical Needs Assessment--See Scope and Cost Review.

(87) Place--An area defined as such by the United States Census Bureau which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town, or village will be considered as part of the incorporated area. Areas annexed by a city, town, or village through limited-purpose annexation are part of that incorporated area for purposes of this chapter. The Department may provide a list of Places for reference.

(88) Potential Demand--Defined in §11.303(d)(9)(E)(iii) of this chapter.

(89) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(90) Primary Market--See "Primary Market Area."

(91) Primary Market Area (PMA)--Defined in §11.303(d)(8) of this chapter.

(92) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter over a partnership, corporation, limited liability company, trust, or any other private entity.

(93) Pro Forma Rent--For a restricted Unit, either Contract Rents or the lesser of the Net Program Rent, Achievable Affordable Rent, or the Market Rent. For an unrestricted Unit, the Market Rent.

(94) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

(95) Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development (HUD).

(96) Qualified Contract (QC)--A bona fide contract for an amount not less than as defined in Code §42(h)(6)(F).

(97) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code §42(h)(6)(F) and as further delineated in §10.408 of this title.

(98) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(99) Qualified Entity--Any entity permitted under Code §42(i)(7)(A) and any entity controlled by such a qualified entity.

(100) Qualified Nonprofit Development--A Development that meets the requirements of Code §42(h)(5), Tex. Gov't Code §2306.6729, and §2306.6706(b), which includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive HTCs.

(101) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C), Tex. Gov't Code §2306.6729, and §2306.6706(b) for all purposes.

(102) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. Reconstructed Units will count as New Construction for purposes of calculating the Replacement Reserves under §11.302(d)(2)(I).

(103) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition, or enhancement, including the following: repair, refurbishment, or replacement of existing components, fixtures, and finishes; correcting deferred maintenance; reducing functional obsolescence; and the addition of energy efficient components and appliances, life and safety systems, site and resident amenities, and other improvements typical of new Developments. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Site, but does not include Adaptive Reuse. (§2306.004(26-a))

(104) Relevant Supply--Defined in §11.303(d)(10)(E) of this chapter.

(105) Report--See Underwriting Report.

(106) Request--See Qualified Contract Request.

(107) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(108) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a

Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the amount defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(109) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a metropolitan statistical area;

(ii) within the boundaries of a metropolitan statistical area, if the statistical area has a population of 25,000 or fewer and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B) of this chapter.

(110) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." An evaluation of the physical condition of an existing Property to determine the immediate cost to rehabilitate and of future capital improvements. An SCR must be prepared in accordance with §11.306 of this chapter.

(111) Scoring Notice--Notification(s) provided to an Applicant of the score for their Application after staff review.

(112) Site--The area or areas on which the Development is proposed and to be encumbered by a LURA, including access easements.

(113) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(9) of this chapter.

(114) Site Demographics Characteristics Report--A report published by the Department that contains necessary information for preparing an Application. Unless otherwise required by statute, the report published no later than November 30 each year, is final and authoritative for Applications submitted in the following Application round.

(115) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(116) State Housing Credit Ceiling--The aggregate amount of Competitive HTC Allocations that may be made by the Department during any calendar year.

(117) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective residents.

(118) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (F) below:

(A) Be intended for and targeting occupancy for households that may benefit from specialized and specific non-medical services.

(B) Be owned and operated by an Applicant or General Partner that must:

(i) offer supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Acceptance Date for Direct Loan Applications;

(ii) provide no less than 30 square feet of Common Area space per Unit that is specifically used for the delivery of supportive services or an amenity for the residents;

(iii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period;

(iv) provide evidence of a history of fundraising activities reasonably sufficient to address any unanticipated operating losses;

(v) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assumes financial responsibility of any outstanding operating deficits throughout the entire Affordability Period; and

(vi) have Tenant Selection Criteria that fully comply with §10.802 of this title and that require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow §1.204 of this title and:

(I) The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least, for temporary denial for a minimum of:

(-a-) seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in §102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution.

(II) The criminal screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Applicants/tenants must receive written notice of their ability to provide materials that support mitigation during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria must include provision for individual review of permanent or temporary denials if the conviction is more than seven years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last seven years. The criteria must prohibit consideration of any previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records.

(III) Disqualifications in a Development's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation. The Development must have an appeal process for other required criteria where the prospec-

tive resident is allowed to demonstrate that information in a third party database is incorrect.

(C) Where supportive services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or are a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department.

(D) Supportive services must meet the minimum requirements provided in this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) either aid in addressing debilitating conditions or assist residents in securing skills, assets, and connections needed for independent living; and

(iv) not be required to qualify for or maintain tenancy in a Unit that the household otherwise qualifies for.

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) below.

(i) Not financed with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions, except for the following:

(I) Construction financing.

(II) A direct Loan from the Department.

(III) A permanent foreclosable loan from a local, state, or federal government or instrumentality thereof if the loan is deferred-forgivable, deferred payable, or cash-flow contingent, the foreclosure provisions are triggered only by default on non-monetary default provisions, and the maturity date is after the end of the Affordability Period.

(IV) A permanent foreclosable loan from an Affiliate if the funds are originally sourced from charitable contributions, nonprofit equity, the Federal Home Loan Bank's Affordable Housing Program, Capital Magnet Fund, or pass-through government funds, if the loan is deferred-forgivable, deferred-payable, or cash-flow contingent, and if the foreclosure provisions are triggered only by default on non-monetary default provisions, and the maturity date is after the end of the Affordability Period.

(V) For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including subject to available cash-flow) is permissible if sourced by federal funds and structured to meet valid debt requirements. Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of Work Out approved by the Department.

(ii) Financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and also supported by project-based rental or project-based operating subsidies for at least 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into Development's design;

(II) the Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VI) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

(119) Target Population--The designation of types of housing populations, including Elderly and Supportive Housing Developments. All others serve general populations. An Applicant or Owner may request to have a non-Elderly preference or limitation for another population(s) required for a federal or state fund source. An Applicant or Owner of a LIHTC Development may request to have a preference or limitation for another non-Elderly special needs population, if such preference or limitation meets the general public use requirements and is listed under §11.1(d)(118)(C)(vii) plus Colonia residents, Persons with a Disability, farmworkers, or those involved in artistic or literary activities, or as otherwise approved by the Board.

(120) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for Housing Tax Credits and that receives a portion of its financing from the proceeds of Tax-Exempt Bonds subject to the state volume cap.

(121) Third Party--A Person who is not:

(A) An Applicant, General Partner, Developer, or General Contractor;

(B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;

(C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) In Control with respect to the Owner.

(122) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee, and General Contractor fee incurred or to be incurred through lease-up by the Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(123) Underwriter--The author(s) of the Underwriting Report.

(124) Underwriting Report--Sometimes referred to as the Report. A decision-making tool prepared by the Department that contains a synopsis of the proposed Development and reconciles the Application information.

(125) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title.

(126) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

(127) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, bathrooms, features, or a square footage difference equal to or more than 120 square feet.

(128) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(129) HUD-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(130) Unstabilized Development--A Development with Comparable Units that has been approved by the Department and has not maintained a 90% occupancy level for at least 90 days following construction completion. The Market Analyst may not consider such development stabilized in the Market Analysis.

(131) Urban Area--A Place that is located within the boundaries of a metropolitan statistical area other than a Place described in paragraph (109)(A) of this subsection, definition of Rural Area. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

(132) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this title.

(133) Work Out Development--A financially distressed Development for which the Owner or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey (ACS) or HUD data, the Department will use the most current data available as of August 1 of the year prior to Application, unless specifically otherwise provided in federal or state law or in the rules. ACS data must be 5-year estimates (not more specific data) unless otherwise specified. The Department will use ACS data for population determination. Where this chapter specifically requires other sources, data available after August 1 but before Full Application Final Delivery Date is permissible. The Department will use, and references to census tracts in this chapter mean, the 2020 Census boundaries unless otherwise noted. Applicants may need to provide Census tract information based on the 2020 and 2010 boundaries if 2020 data are not available as of August 1, 2026 for the specific item in question. All references to QCTs throughout this chapter mean those designated by HUD to be effective in 2027. Where this chapter requires the division of Census tracts into quartiles, and the number of tracts is not evenly divisible by four, the Department will divide in the manner below. If the division of the tracts into quartiles leaves:

(1) one excess tract, then the first quartile will contain the excess tract;

(2) two excess tracts, then the first and second quartiles will contain an excess tract each; or

(3) three excess tracts, then the first, second, and third quartiles will contain one excess tract each.

(f) Deadlines. Where the chapter identifies a specific date or deadline, the Department must receive the relevant information or documentation on or before 5:00 p.m. Austin local time on the day of the deadline if the Department is open for general operation, or if not, the first day after the deadline when it is open. Unless otherwise noted or provided in statute, deadlines are based on calendar days. The Department will not waive deadlines, with respect to both date and time, except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. All required documents must be legible, properly organized, and tabbed. Materials involving digital media must be in the required format, complete, and fully readable.

(g) Documentation to Substantiate Items and Representations in a Competitive HTC Application. The Department posts Applications and all correspondence and other information on its website. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation.

(h) Board Standards for Review. The Board is not constrained to a particular standard and its actions on one matter are not binding as to how it will address another matter.

(i) Scattered Site Applications. As it relates to calculating any distances (tie determinations, proximity to features, etc.), year of initial construction, or determining satisfaction of scoring, the Department will use the site that scores or ranks the lowest for that analysis. Higher scoring or performing sites cannot elevate the score or performance of other sites in a scattered site Application.

(j) Public Information Requests. Any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. (§2306.6717) The filing of a pre-application or Application with the Department is consent to the release of any and all information contained therein. The Applicant will certify that the authors of reports, documents, and other information submitted with the Application have given their consent for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(k) Responsibilities of Municipalities and Counties. Municipalities and counties are responsible for determining whether their handling of actions regarding resolution(s) required under this chapter are consistent with Fair Housing laws or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds.

(l) Request for Staff Determinations.

(1) An Applicant may request and Department staff may provide a determination explaining how staff will review an Application in relation to the applicable rules, other than for a scoring item. The Department must receive such request in writing prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account

(A) the articulated purpose of or policies addressed by a particular rule or requirement,

(B) materiality of elements,

(C) substantive elements of the development plan that relate to a term or definition,

(D) a common usage of the particular term, or

(E) other issues relevant to a rule or requirement.

(2) If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to directly related issues. An Applicant may not rely on any determination for another Application regardless of similarities. For any Application that does not receive a determination, the definitions and applicable rules will apply as used and defined herein. An Applicant may appeal a staff determination for their Application, following the Appeal Process in §11.902 of this chapter (including being timely), if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed.

§11.2. Program Calendar for Housing Tax Credits.

(a) Competitive HTC Deadlines. The Department may extend non-statutory deadlines in the Program Calendar for up to five business days if the Applicant has, in writing, requested an extension prior to the original deadline and established good cause for the extension.
Figure: 10 TAC §11.2(a)

(b) Tax-Exempt Bond and Direct Loan-only Application Dates and Deadlines. Other deadlines are in Chapters 12 and 13 or a NOFA.

(1) The Full Application Delivery Date is the deadline by which the Department must receive the Application, including the Application Acceptance Date in the applicable NOFA for Direct Loan Applications and §11.201 of this chapter for Tax-Exempt Bond Developments.

(2) The Administrative Deficiency Response Deadline is five business days after the date on the deficiency notice, unless extended under §11.201(6) of this chapter.

(3) For Direct Loan Applications not also requesting Tax Credits or Bonds, Applicants must submit the Third Party reports meeting the applicable NOFA requirements. For Tax-Exempt Bond Developments, the Department must receive Third Party Reports pursuant to §11.201(2) of this chapter.

(4) The Department must receive resolutions required for Tax-Exempt Bond Developments no later than 14 calendar days before the Board meeting or prior to the issuance of the Determination Notice, as applicable.

(5) The Department must receive challenges no later than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3. Housing De-Concentration Factors.

(a) To the extent these rules deviate from the statute, the statutory language is controlling. The Multifamily Uniform Application Templates contain acceptable, but not required, forms of resolution referenced herein.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) Staff will not recommend, and the Board will not award, an Application that proposes a Site less than two linear miles from the proposed Site of another Application in a county with a population that exceeds one million awarded in the same calendar year. (§2306.6711(f)) If awarding two or more Applications would violate §2306.6711(f), the Department will use the following priorities, in rank order, to determine which to award:

(A) The steps in the Award Recommendation Methodology described in §11.6(3).

(B) The higher-scoring Application, including consideration of tie breakers. Regardless of the priority established by (A) or (B), the Department will not give priority to an Application not recommended for an award at the July Board meeting over another Application that otherwise would be recommended for an award.

(2) This subsection does not apply if an Application is in any municipality with a population of two million or more where

(A) a federal disaster has been declared by the Full Application Delivery Date,

(B) the Governing Body has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date, and

(C) the municipality is authorized to administer disaster recovery funds as a subgrant recipient. (§2306.6711(f-1))

(c) Twice the State Average Per Capita (Competitive HTC and Tax-Exempt Bond Only). If a proposed Development is in a municipality, or if completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period begins), then the appropriate Governing Body must approve the Development. (§2306.6703(a)(4)) Such approval must include an adopted resolution setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text, and authorizing an allocation of Housing Tax Credits for the Development. Applicants must submit required documentation by the Full Application Delivery Date or Resolutions Delivery Date, as applicable.

(d) One Mile Three Year Rule (Competitive HTC and Tax-Exempt Bond Only). (§2306.6703(a)(3)).

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets the criteria in subparagraphs (A) - (C) below will be ineligible:

(A) serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) has received a new or supplemental allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed Development that is:

(A) using federal HOPE VI (or successor program) funds received through HUD;

(B) using locally approved funds received from a public improvement district or a tax increment financing district;

(C) using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) in a county with a population of less than one million;

(F) located outside a metropolitan statistical area; or

(G) approved by the Governing Body of the appropriate municipality or county by vote specifically allowing the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. Required documentation must be submitted by the Full Application Delivery Date or Resolutions Delivery Date, as applicable.

(3) Where a specific source of funding is referenced in paragraphs (2)(A) - (D) of this subsection, the Application must provide a commitment or resolution documenting a commitment of the funds.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes a New Construction or Adaptive Reuse Development in a census tract that has more than 20% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report will be ineligible unless the appropriate Governing Body adopts a resolution of no objection. (Rehabilitation Developments are exempt.) The Department must receive the resolution by the Full Application Delivery Date or Resolutions Delivery Date, as applicable.

(f) Proximity of Sites. (Competitive HTC Only) In a county with a population of less than one million, if two or more HTC Applications, regardless of the Applicant(s), propose Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring of the Application(s), including consideration of tie breakers, will be ineligible unless the higher scoring Application is terminated or withdrawn.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications propose Developments in the same census tract in an urban subregion, the lower scoring of the Application(s), including consideration of tie breakers, will be ineligible unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under §11.5(2) or §11.5(3) of this chapter.

§11.4. Tax Credit Request, Award Limits, and Increase in Eligible Basis.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Owner) Housing Tax Credits in an aggregate amount greater than $6 million in a single Application Round. All entities under common Control are Affiliates. Prior to posting the agenda for the last Board meeting in June, an Applicant with Applications pending for more than $6 million may notify staff in writing or by email of the Application(s) they will not pursue. Such Applications will remain on the waiting list if not otherwise terminated. If the Applicant does not self-select by this date, staff will first select the Application(s) that will enable compliance with the state and federal nonprofit set-asides, and then the highest scoring Application(s), including consideration of tie breakers. A Person is not an Applicant, Developer, Affiliate, or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing";

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services;

(4) receives fees as a consultant or advisor that do not exceed $200,000; or

(5) is a mezzanine finance company that does not have Control.

(b) Maximum Request Limit (Competitive HTC Only).

(1) For all Applications, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or $2,000,000, whichever is less.

(2) For Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the IRS notice regarding the credit ceiling. (2306.6711(h))

(3) For all Applications, the HTC amount requested in the pre-application and Application is final unless the Department reduces it.

(4) The Tax Credit request amount cannot change through the Administrative Deficiency process under §11.1(d) of this chapter.

(5) The Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30% Boost). The Department will evaluate Applications for an increase of up to 30% in Eligible Basis based on meeting any one of the criteria in paragraphs (1) - (4) of this subsection. Staff will recommend an increase only to the extent necessary for financial feasibility.

(1) The Development is for New Construction or Adaptive Reuse and is in a QCT

(A) that has less than 20% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report, or

(B) the Application includes a resolution of no objection by the appropriate Governing Body acknowledging the Development is located in a census tract that has more than 20% Housing Tax Credit Units per total households. All Rehabilitation Developments in a QCT are eligible for the boost and not required to obtain a resolution. The Department must receive required documentation by the Full Application Delivery Date or Resolutions Delivery Date, as applicable. The Application must include a census map that includes the 11-digit census tract number and shows that the proposed Development is in a QCT.

(2) The Development is in a Small Area Difficult Development Area (SADDA) or Difficult Development Area (DDA). The Application must include a map that shows the proposed Development is in a SADDA or DDA.

(3) For Competitive HTC only, Development meets one of the criteria described in subparagraphs (A) - (F) below:

(A) is in a Rural Area;

(B) is entirely Supportive Housing in accordance with §11.1(d) of this chapter;

(C) meets the criteria for the Opportunity Index as defined in §11.9(c)(5) of this chapter;

(D) restricts 10% of the proposed low income Units for households at or below 30% of AMGI (these Units may not be used to meet any scoring criteria or any Direct Loan program requirement);

(E) in an area covered by a concerted revitalization plan (eligible for and elects points under §11.9(d)(7) of this chapter), is not an Elderly Development, and is not in a QCT; or

(F) in a Qualified Opportunity Zone.

(4) The Department will underwrite Tax-Exempt Bond Developments, to include the 30% boost if the designation coincides with the Certificate of Reservation program year or the bond issuer certifies having received a complete application in the year the QCT, DDA, or SADDA designation was effective. If the issuer is a member of the organizational structure, then such certification must come from its bond counsel.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)).

An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies as of the Full Application Delivery Date. The Board will apply commitments to each Set-aside, Rural regional allocation, Urban regional allocation, and USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)). The Department will allocate at least 10% of the State Housing Credit Ceiling for each calendar year to Qualified Nonprofit Developments. Qualified Nonprofit Organizations must have the controlling interest in the Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the manager of the Managing General Partner limited liability company, the Qualified Nonprofit Organization must be the Manager of the controlling Managing Member. The nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement and materially participate in the development and operation of the Development throughout the Compliance Period. Material participation means regular, continuous, and substantial involvement in providing services integral to the Development Team (serving as an independent contractor is insufficient). The Department will consider an Applicant that meets the Qualified Nonprofit Set-Aside requirements to be applying under that Set-aside unless their Application specifically includes an affirmative election otherwise and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department may request a change in this election or to not recommend an award for those unwilling to change elections if it receives insufficient Applications in the Nonprofit Set-Aside. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)). The Department will allocate 5% of the State Housing Credit Ceiling for each calendar year to Rural Developments financed through USDA. If an Application in this Set-aside involves Rehabilitation it will come from the At-Risk Development Set-aside. If New Construction it will come from the applicable Uniform State Service Region and compete within the applicable subregion (unless the Application is receiving USDA Section 514 funding). Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under §§514, 515, or 516 of the Housing Act of 1949 may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether it is in a Rural Area. (§2306.111(d-4))

(B) All Applications that are eligible to participate under the USDA Set-aside are Rural for all scoring items under this chapter. A Property receiving USDA financing unable to participate under the USDA Set-aside in an Urban subregion will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702).

(A) The Department will allocate at least 15% of the State Housing Credit Ceiling for each calendar year under the At-Risk Development Set-aside to Applications involving preservation of Developments identified as At-Risk (§2306.6714) and will deduct it prior to the application of the regional allocation formula under §11.6 of this chapter. Rehabilitation Developments under the USDA Set-aside will have priority for 5% of the State Housing Credit Ceiling associated with this Set-aside. Additional Applications that qualify under the USDA Set-Aside may compete within this Set-Aside only if they meet the definition for an At-Risk Development, have submitted the required supporting documentation, and were not submitted under the USDA Set-Aside. Applications submitted under the USDA Set-Aside in excess of meeting the 5% priority do not qualify for the At-Risk Set-Aside.

(B) An At-Risk Development qualifying under §2306.6702(a)(5)(A) must meet the following requirements:

(i) Received a subsidy from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §1715l);

(II) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(III) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages as specified by 24 CFR Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects as specified by 24 CFR Part 886, Subpart C; (VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486);

(VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(VIII) Code §42.

(ii) The Department will consider any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years after July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages will qualify as At-Risk if such mortgage is eligible for prepayment.

(iii) Developments with existing Department LI-HTC LURAs must have completed all applicable ROFR procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under §2306.6702(a)(5)(B) must meet one of the requirements under clause (i), (ii) or (iii) below:

(i) Units to be Rehabilitated or Reconstructed are owned by a public housing authority (or a public facility corporation created by one under Chapter 303, Local Government Code) and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(ii) Units to be Rehabilitated or Reconstructed are proposed to be disposed of or demolished, or already have been within the two-year period preceding the date the Application is submitted, by a public housing authority (or public facility corporation created by one under Chapter 303, Local Government Code) and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(iii) The Development receives or will receive assistance through the Rental Assistance Demonstration (RAD) program administered by HUD, participation is included in the applicable public housing plan most recently approved by HUD, and HUD approved the Units proposed for Rehabilitation or Reconstruction for participation. (§2306.6702(a)(5)(B)(iii)) Notwithstanding any other provision of law, an At-Risk Development previously allocated housing tax credits set aside under subparagraph (a) of this section does not lose eligibility for those credits if the public housing Units are later converted under RAD. (§2306.6702(a)(5)(B))

(D) An Application for a Development that includes the demolition of the existing Units that have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing Units in an otherwise qualifying At-Risk Development if: (§2306.6702(a)(5)(B))

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits proposes at least the same number of restricted Units (the Applicant may add market rate Units); and

(iii) either:

(I) the new Development Site qualifies for points on the Opportunity Index under §11.9(c)(5) of this chapter; or

(II) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) submits a resolution supporting the proposed Development in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7) of this chapter (Sites crossing jurisdictional boundaries must provide such resolutions from both governing bodies).

(E) Developments meeting the definition contained in §2306.6702(a)(5)(A)(ii) above must retain, renew, or replace existing financial benefits and affordability unless regulatory barriers necessitate otherwise.

(i) The application includes evidence of the legal requirements that will unambiguously cause the loss of affordability within two calendar years of July 31 following the year the Application is submitted.

(ii) Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must retain only a portion of the subsidy, but no less than 25% of the proposed Units must be public housing units. (§2306.6714(a-1)). If less than 100% of the public housing benefits are transferred to the proposed Development, the Application must include an explanation of the disposition of the rest and a copy of the HUD-approved plan for demolition and disposition.

(F) Developments within the three-year period described at Code, §42(h)(6)(E)(ii) count as nearing expiration.

(G) Developments eligible to request a Qualified Contract count as nearing expiration on a requirement to maintain affordability. Applications must include

(i) a copy of the recorded LURA,

(ii) the first year's IRS Form(s) 8609 for all buildings showing Part II completed and,

(iii) if applicable, documentation from the original application regarding the ROFR and evidence that any applicable ROFR procedures have been completed prior to the pre-application Final Delivery Date.

(H) The Department will not accept an amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development submitted after the Application has been filed.

§11.6. Competitive HTC Allocation Process.

This section identifies the general allocation process and the methodology by which awards during the Application Round are made.

(1) Regional Allocation Formula. The Department will initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than $750,000. (§2306.1115 and §2306.111(d-3)). The process of awarding within each subregion will follow this section. In the event of a situation not addressed explicitly herein, staff will make a recommendation to the Board based on the objectives of the regional allocation formula and Tex. Gov't Code, Chapter 2306. In general the recommendation will not involve broad reductions in resource request amounts or rearranging Applications' competitive ranking.

(A) The Department will provide the public the opportunity to comment on and propose alternatives.

(B) If staff determines an allocation would cause a violation of the $6 million credit limit per Applicant, then their recommendation will be based on the criteria described in §11.4(a) of this chapter.

(C) The Department will publish on its website, on or before December 1 of each year, initial estimates of Regional Allocation Formula percentages and limits of credits available, and other times if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. The Department will first replace any returned credits to its original subregion or set-aside (not including force majeure returns and reallocations), treating the credits in a manner consistent with the allocation process in this section. Credits returned to the USDA or At-Risk Set-Asides are not eligible to flow to another subregion or set-aside unless no eligible Applications remain in the Set-Aside to which the credits were returned. The Department will award anything received from the "national pool" after the initial awards in late July to the next Application on the waiting list for the state collapse, if sufficient to fund the Application.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will conduct application reviews in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. Staff also will use the procedure below in making recommendations to the Board. Staff may review additional Applications beyond those described below; however, the Department cannot accommodate requests for specific additional Applications to be reviewed.

(A) USDA Set-Aside Application Selection (Step 1). Applications with the highest scores in the USDA Set-Aside until attaining the minimum requirements stated in §11.5(2) of this chapter. The Department may exceed the minimum requirement to fully award the last Application.

(B) At-Risk Set-Aside Application Selection (Step 2). Applications with the highest scores in the At-Risk Set-Aside statewide until attaining the minimum requirements stated in §11.5(3) of this chapter. The Department may exceed the minimum to fully award the last Application. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps. If the Department awards all eligible Applications and does not meet the minimum, the Department will award the highest scoring Application(s) pursuant to §11.5(3)(A) of this chapter until meeting the minimum.

(C) Initial Application Selection in Each Subregion (Step 3). The Department will then select the highest scoring Applications within each of the 26 subregions for which there are sufficient funds to make full awards. Applications electing the At-Risk or USDA Set-Asides are ineligible for an award from a subregion. In Urban subregions in which credits available do not allow achieving all the priorities in clauses (iii) to (v) of this subparagraph, the Department will follow the priorities in the order reflected in this subparagraph.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, publish the maximum percentage on its website. (§2306.6711(h))

(ii) In Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board will allocate credits to the highest scoring Development, if any, that is

(I) part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)),

(II) in an Urban subregion, and

(III) within the boundaries of a municipality with a population that exceeds 500,000. (§2306.6711(g))

(iii) In Urban subregions containing a county with a population that exceeds 750,000, the Board will allocate credits to the highest scoring Development, if any, that is in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and includes funds from the HUD Choice Neighborhood awardee in the Application's Sources and Uses.

(iv) In Urban subregions containing a county with a population that exceeds 1,000,000, the Board will allocate credits to the highest scoring Development, if any, that elects to provide a High-Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Site that meets the requirements of items (a)-(c) of subparagraph (C)(i)(I) of §11.101(b)(5). Elderly and Supportive Housing Developments are not eligible for this item. The Application must include a written agreement between the Applicant and the proposed Educational Provider.

(v) Not more than one Application with a Supportive Housing Target Population per subregion may be awarded, plus one additional Application with a Supportive Housing Target Population in any subregion containing a county with a population of at least 2,500,000, unless there are no other eligible Applications in the subregion. Awards made in the At-Risk Set-Aside will not count towards this limitation.

(D) Rural Collapse (Step 4). If any credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) remain after award under subparagraph (C) of this paragraph, the Department will combine such credits into one "pool" available in any other Rural Area to the Application in the most underserved Rural subregion as compared to the subregion's allocation, continuing with the priorities and limitations established in §11.6(3)(C). This redistribution will continue until the Department allocates all credits in the "pool" to Rural Applications and at least 20% of the credits available to the State to Applications in Rural Areas (§2306.111(d)(3)).f In the event more than one subregion is underserved by the same percentage, the Department will use clauses (i) - (ii) below to select the next most underserved subregion:

(i) no recommended At-Risk Applications from the same Application Round; then

(ii) was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). The Department will combine any credits remaining after the Rural Collapse, including those in any subregion in the State, into one "pool" to award the highest scoring Application, and pursuant to §11.6(3)(C), in the most underserved subregion in the State compared to the amounts originally available in each. This process will continue until the funds remaining are insufficient to award the next highest scoring eligible Application in the next most underserved subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate to an Urban subregion more than the maximum percentage of credits available as calculated through the Regional Allocation Formula (RAF) for Elderly Developments (as a result, some may be excluded from the pool). The Department will publish the maximum percentage for each such Urban subregion on its website (§2306.6711(h)). At least seven calendar days prior to the July Board meeting the Department will post on its website the most current State of Texas Competitive HTC Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the awards within the State Collapse. If more than one subregion is underserved by the

same degree, the Department will use the priorities clauses (i) and (ii) below to select the next most underserved subregion:

(i) no recommended At-Risk Applications from the same Application Round; and

(ii) was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If the criteria in subparagraphs (A) - (E) of this paragraph would result in an insufficient number of Nonprofit Set-Aside awards, the Department will repeat the criteria described in subparagraphs (C) - (E) of this paragraph after selection of the highest scoring Nonprofit Application(s) statewide to meet the minimum requirements.

(4) Waiting List. The Department will place Applications that do not receive an award by July 31 and remain active and eligible on the waiting list. The Department will use the allocation process to determine awards, including making returned HTCs first available in the set-aside or subregion from which they were originally awarded.

(A) The Department will hold all credit available after the late-July Board meeting until September 30 and may make award(s) if fully sufficient for one or more Applications.

(B) The Department may make award(s) of credits available after September 30 when the amount is fully sufficient for the next Application(s).Notwithstanding the foregoing, the Department may delay awards until resolution of appeals or other challenges to decisions related to returns or rescissions. Compliance with Set-Aside requirements may result in awarding a lower-ranked application. Staff may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to help ensure allocation of credits by December 31. (§2306.6710(a) - (f); §2306.111).

(5) Credit Returns Resulting from Force Majeure Events. If the Department receives a return of Competitive HTCs from an Application that received an award during any of the preceding three program years, and the Development cannot be completed within six months of its initial deadline to place in service, such returned credit will not be subject to the requirements of paragraph (2) of this section if the Board determines that all of the requirements of this paragraph are met to its satisfaction. For purposes of this paragraph, returns after September 30 of the preceding program year may be considered to have happened on January 1 of the current year. The Board will allocate such credits separately, making a determination of the year of the Multifamily Rules which apply to the Development. The Board may impose conditions, including an earlier Placed in Service Deadline. The Department will not consider requests to allocate returned credit separately where all of the requirements of this paragraph have not been met, waivers of any part of this paragraph, or presentations not within 180 days of the applicable Placed in Service deadline. The Board may approve the execution of a current program year Carryover Agreement with the Owner that returned such credits only if:

(A) The return was a result of the following sudden and unforeseen "Force Majeure" events outside the control of the Owner that occurred before issuance of Forms 8609: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. The event must make construction activity impossible or materially impede its progress. Under no circumstance will the Board consider acts or events caused by the negligent or willful act or omission of the Owner, Affiliate or a Related Party to be caused by Force Majeure. The Owner must clearly explain how rainfall, material shortages, or labor shortages constitute Force Majeure and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in forming a recommendation.

(B) If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions.

(C) Construction of the Development must have already commenced.

(D) An Owner must provide evidence of the type of event when it happened, and that the loss was a direct result of the event.

(E) The Owner must prove that it took reasonable steps to minimize or mitigate any delay or damages, the Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, the Development and Owner were properly insured, and the Department received timely notification of the likelihood or actual occurrence.

(F) The event prevents the Owner from meeting the placement in service requirements of the original allocation.

(G) The requested current year Carryover Agreement allocates the same amount as was returned.

(H) The Department determines that the Development continues to be financially feasible after taking into account any insurance proceeds.

(6) Credit Returns Due to Unforeseen Short-term Delays. If the Department receives a return of Competitive HTCs from an Application that received an award during any of the preceding three program years, and the Development can be completed within six months of its initial deadline to place in service, such returned credit will not be subject to the requirements of paragraph (2) of this section if staff determines that all of the requirements of this paragraph are met. For purposes of this paragraph, staff may consider returns after September 30 of the preceding program year to have happened on January 1 of the current year. The Board will allocate such credits separately, making a determination of which year of Multifamily Rules apply to the Development. The Multifamily Rules from the initial year of allocation will apply to the Development, to the extent allowed by federal or state law. The new deadline to place in service will be no more than six months from the original deadline. The Department will not consider either requests to allocate returned credit separately where all requirements of this paragraph have not been met or requests for waivers of any part of this paragraph. Staff may either execute a current program year Carryover Agreement with the Owner that returned such credits if the following requirements are met or present the matter to the Board for determination.

(A) The credits were returned for good cause as solely determined by staff or the Board.

(B) An Owner claiming good cause provided evidence of the circumstances.

(C) The Owner proved it took reasonable steps to minimize or mitigate any delay or damages, it substantially fulfilled all reasonable obligations, it and the Development were properly insured, and that the Department received timely notice of the likelihood of delay.

(D) The good cause event prevents the Owner from meeting the placement in service requirements of the original allocation.

(E) The requested current year Carryover Agreement allocates the same amount as was returned.

(F) The Department determines that the Development continues to be financially feasible after taking into account any insurance proceeds.

(G) The Owner has not previously returned the credit allocation.

§11.7. Tie Breaker Factors.

If Competitive HTC Applications receive the same number of points in a set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will use the factors in this section, in the listed order, to determine awards. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors do not address a tie between equally underserved subregions in the rural or statewide collapse.

(1) For the USDA Set-Aside:

(A) Applications proposed to rehabilitate the Property with the earliest year of initial construction as a residential Development.

(i) Only the year of initial construction, not the specific date of construction or conversion. A tie will persist if Applications have the same year.

(ii) If a Development was constructed over a number of years, the earliest year.

(iii) The Year submitted must be evidenced by the initial USDA loan documentation to be eligible.

(B) No further applications with USDA financing will receive preference under this tie breaker after the Department meets the requirements of this set-aside, but may receive preference under subsections (2) and (3) of this paragraph.

(2) For all other competitive Applications:

(A) Applications proposed in closest proximity to the following features as of the Full Application Delivery Date. A feature will be disqualified if, as of the Full Application Delivery Date, a public announcement has been made regarding its anticipated closure.

(i) A park or a parcel of land dedicated for public use by either a governmental entity or an entity authorized or created by a governmental entity that is used as parkland or for a recreational purpose. This feature must have been designated by the relevant authority and operating as a public park one year prior to the Full Application Delivery Date. Neither features that charge admission for the general public to access the entire property for the majority of the calendar year nor facilities located on a school campus count. Unimproved land that has been dedicated but is not operating as a public park will not qualify unless it is a wilderness area with an intentional recreational use as evidenced by clear signage and established hiking or walking trails.

(ii) The closest public school campus of any grade level that is part of an independent school district.

(iii) A full service grocery store of sufficient size and volume to provide for the needs of the surrounding neighborhood (including the proposed Development) offering the following: a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats and poultry; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses; and a wide variety of household goods, paper goods and toiletry items. Grocery stores that require paid membership may qualify.

(iv) A Public Library with indoor space, physical books that can be checked out and that are of general and wide-ranging subject matter, computers and internet access and is open 35 hours or more per week in an Urban Area and 25 hours or more per week in a Rural Area. The library must not be age or subject-restricted and must be at least partially funded with government funding.

(v) A pharmacy. To qualify, the pharmacy must be classified as community pharmacy by the Texas State Board of Pharmacy (TSBP) and be listed in the license verification system available on TSBP's website with an active license status. Delivery-only pharmacies and those listed by TSBP as "Closed Door" are not eligible. Qualifying pharmacies located inside of grocery stores may be counted regardless of whether the grocery store is also used for this tie-breaker, in which case, the distance to the grocery store and distance to the pharmacy are still calculated separately.

(vi) An urgent care clinic that offers the provision of immediate medical service offering outpatient care for the treatment of acute and chronic illness and injury, excluding any emergency care facility licensed under Tex. Gov't Code Chapter 254 (as listed in the Texas Health and Human Services Directory of Freestanding Emergency Medical Care Facilities) and general hospitals licensed under Texas Health and Safety Code Section 241.003 (as listed in the Texas Health and Human Services Directory of General and Special Hospitals). To qualify under this definition, the facility must: maintain extended service hours defined as 10 operating hours on weekdays and operating hours on both Saturday and Sunday; accept walk-in clients; serve all clients regardless of age; and must provide radiology services.

(B) The linear measurements will be performed from the closest parcel boundary of the Site to the closest parcel boundary of each feature, with the feature's parcel boundaries being established by the central appraisal district. A feature's parking lot is included as part of that feature if it is immediately adjacent. The Department may prescribe a specific form to be used for these calculations.

(C) The Application with the lowest sum of proximities for its three shortest distances will receive preference.

(D) A feature will be disqualified if it does not conform to the definitions provided, or the applicant misrepresents the distance. If one of the three shortest distances to a feature is disqualified, the fourth shortest distance will replace it. If more than three features are disqualified, the Application will not receive preference. If the competing application(s) also has more than three disqualified features, the tie will persist.

(E) If the sums of proximities described under §11.7(2)(B) for two tied Applications differ by 100 or fewer feet, the tie will persist.

(3) If the tie persists, the preference will go to the Application that proposes the lowest Housing Tax Credit request per Low-Income Unit. This calculation will be determined based on the initial Application request, not a lower amount as adjusted by staff.

(4) If the tie persists, the preference will go to Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and was awarded 15 or fewer years ago. Developments included are those in the HTC Site Demographic Characteristics Report (regardless of whether a LURA is in place). Years are measured in whole years (not month and date) and calculated by deducting the

"Board Approval" year on the Site Demographics Characteristics report from the current year. The linear measurement is between closest boundaries as presented at Pre-Application or Application, whichever is closest.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. A pre-application is complete if it meets the criteria in subsections (a) and (b) of this section.

(1) Applicants must submit pre-applications using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee in §11.901 of this chapter not later than the pre-application Final Delivery Date in §11.2(a) of this chapter.

(2) Applicants may submit only one pre-application for each Site and for each Site Control document.

(3) Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. Pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications and consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date.

(b) Pre-Application Threshold Criteria. The Department will terminate pre-applications unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection. (§2306.6704(c))

(1) Submission of the Competitive HTC pre-application in the form prescribed by the Department which identifies or contains at a minimum:

(A) Site Control meeting the requirements of §11.204(9) of this title. Proof of consideration and any documentation required for identity of interest transactions is not required for pre-application submission but is for full application submission.

(B) Funding request.

(C) Target Population.

(D) Requested set-asides (At-Risk, USDA, Nonprofit, or Rural).

(E) Total Number of Units proposed.

(F) Census tract number or numbers in which the Site is located, and a map of the census tract(s) with an outline of the proposed Site.

(G) Expected score for each of the scoring items identified in the pre-application materials.

(H) Proposed name of ownership entity.

(I) Supporting documentation of points to be claimed related to Underserved Area and/or Proximity to Jobs.

(J) The name and coordinates of the features to be used for the Tie Breaker.

(K) For Applications funded through the USDA Set-Aside; year of initial construction as evidenced by the initial USDA loan documentation.

(L) If a high-quality Pre-Kindergarten will be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application.

(M) The name and address of the nearest HTC assisted Development as described in §11.7(4) of this chapter.

(2) Evidence in the form of a certification that the notifications required under this paragraph have been made. (§2306.6704).

(A) The Applicant must conduct a reasonable search for all Neighborhood Organizations on record with the county or Secretary of State 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development and list them in the pre-application.

(B) Notification Recipients. Developments located in an extraterritorial jurisdiction (ETJ) of a municipality must notify both municipal and county officials by e-mail, fax or mail with registered return receipt (or similar tracking mechanism). The format must be either what is included in the Public Notification Template provided in the Uniform Multifamily Application Template or an alternative format that meets the applicable requirements and achieves the intended purpose. Meetings and discussions do not constitute notification. The Applicant must retain proof of delivery. Acceptable evidence of such delivery includes signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those in office at the time the pre-application is submitted. A mailed notification correctly addressed to the entity or officeholder rather than a specific person is acceptable so long as it otherwise meets all requirements. If a change in jurisdiction between pre-application and the Full Application Delivery Date results in the Development being in a new jurisdiction, the Applicant must make additional notifications at full Application to any entity not previously notified. No later than the date the pre-application is submitted, notification must be sent to the entities prescribed in clauses (i) - (viii) below:

(i) Neighborhood Organizations described in (b)(2)(A) above.

(ii) Superintendent of the school district in which the Site is located.

(iii) Presiding officer of the board of trustees of the school district in which the Site is located.

(iv) Mayor of the municipality (if the Site is within a municipality or its extraterritorial jurisdiction).

(v) All elected members of the Governing Body of the municipality (if the Site is within a municipality or its extraterritorial jurisdiction).

(vi) Presiding officer of the Governing Body of the county in which the Site is located.

(vii) All elected members of the Governing Body of the county in which the Site is located.

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Site.

(C) Contents of Notification.

(i) The notification must include, at a minimum, the information described in subclauses (I) - (IX) below:

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city, and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (e.g., single family homes, duplex, apartments, high-rise, etc.);

(VI) the approximate total number of Units and approximate total number of Low-Income Units;

(VII) the residential density of the Development (i.e., the number of Units per acre);

(VIII) information on how and when an interested party or Neighborhood Organization can provide input to the Department; and

(IX) information on any proposed property tax exemption.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a population exclusively or as a preference unless doing so is documented in the Application and is in full compliance with all applicable state and federal laws (including fair housing).

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which satisfy the pre-application requirements will be eligible for pre-application points. The information released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate credits to any Development and the Department bears no liability for decisions made by Applicants based on the pre-application Submission Log. Inclusion on the pre-application Submission Log does not ensure receiving points for a pre-application.

(d) Applicants that might request a Direct Loan may submit a Request for Preliminary Determination on or before February __, 2027. The Department may use the results of evaluation of the Request as evidence of review of the Development and the Principals for purposes of scoring under §11.9(e)(1)(F) of this chapter. Submission of a Request for Preliminary Determination does not obligate the Applicant to request a Direct Loan.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. Unless explicitly allowed, there is no rounding of numbers in this section for any of the calculations to meet a requirement or limitation. The Development's LURA may reflect some or all Application representations.

(1) The Application must include maps indicating the distances to the applicable facilities, measured from the nearest boundary of the Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held.

(2) The Department will review only point items specifically elected in the Application (including the Self-Scoring form, as applicable). Except for scoring items awarded based on tiered categories, if an Application does not qualify for the points elected, staff will not determine whether it might qualify for alternative points.

(3) The Department will not reassess points when costs or financing change after completion of underwriting or award (whichever occurs later) unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); 2306.6725(b)(1)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) below.

(A) Unit Sizes (6 points). The Development must either meet the minimum requirements in this subparagraph, or involve Rehabilitation (excluding Reconstruction), receive funding from USDA, or be a Supportive Housing Development. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements:

(i) 500 square feet for an Efficiency Unit;

(ii) 600 square feet for a one Bedroom Unit;

(iii) 850 square feet for a two Bedroom Unit;

(iv) 1,050 square feet for a three Bedroom Unit; and

(v) 1,250 square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants electing to provide specific amenity and quality features in every Unit at no extra charge to the tenant will earn points based on the criteria in §11.101(b)(6)(B) of this title. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. An Application may qualify to receive any one of one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), (C), or (D) below.

(A) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization and the Application is submitted in the Nonprofit Set-Aside, meeting the criteria in §11.5(1) of this chapter. The Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50%, and no less than 5% for any category. For HUD 202 Rehabilitation projects, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total percentage must still equal 50%, even if it is only attributable to one category. A Principal of the Qualified Nonprofit Organization is not a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of the Qualified Nonprofit Organization).

(i) The Qualified Nonprofit Organization must materially participate and have directly related housing experience, which may include property management, construction, development, financing, or compliance. (2 points)

(ii) The Qualified Nonprofit Organization is involved with the Development Services or in the provision of on-site tenant services during the Affordability Period. (1 point)

(B) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of Code §42(h)(5)(C) on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant. (2 points)

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the Compliance Period. Nonprofit organizations that formally operate under a parent organization may assign Control to that parent organization, doing so meets the requirements of Code §42(h)(5)(C).

(ii) The nonprofit organization, or individuals with Control of it, must provide verifiable documentation of at least 10 years' experience in the continuous operation of a housing development that provides services similar to those in the proposed Development.

(iii) The Application qualifies for at least 3 additional points under §11.101(b)(7) of this chapter, in addition to points selected under subsection (c)(3) of this section.

(C) Property Tax Status. The Application includes a certification that the Owner will not seek or effect any exemptions, abatements, rebates, or similar reductions in ad valorem taxes imposed by the relevant taxing units prior to the expiration of the federal Compliance period.

(D) Housing Authority or HFC. The ownership structure contains a Housing Finance Corporation organized under Local Government Code Chapter 394, a Housing Authority organized under Local Government Code Chapter 392 or an instrumentality or affiliate thereof, and the entire Site is within that entity's area of operation. (2 points)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (B), (C), or (D) below.

(A) At least the following percentages of all Low-Income Units for any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election (Code §42(g)(1)):

(i) 60% at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) 40% at 50% or less of AMGI (15 points);

(iii) 30% at 50% or less of AMGI (13 points); or

(iv) 20% at 50% or less of AMGI (11 points)

(B) At least the following percentages of all Low-Income Units for Developments located in areas other than those listed in subparagraph (A) of this paragraph that propose to use either the 20-50 or 40-60 election (Code §42(g)(1)):

(i) 60% at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) 20% at 50% or less of AMGI (15 points);

(iii) 15% at 50% or less of AMGI (13 points); or

(iv) 10% at 50% or less of AMGI (11 points)

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the average Income election (§42(g)(1)(C) of the Code), the Average Income and Rent restriction for all Low-Income Units will be:

(i) 54% or lower (15 points);

(ii) 55% or lower (13 points); or

(iii) 56% or lower (11 points)

(D) For Developments located in the areas other than those listed in subparagraph (C) of this paragraph that propose to use the average Income election (Code §42(g)(1)(C)) the Average Income and Rent restriction for all Low-Income Units will be:

(i) 55% or lower (15 points);

(ii) 56% or lower (13 points); or

(iii) 57% or lower (11 points)

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting. These points are in addition to paragraph (1)(A) or paragraph (1)(B) of this subsection. If selecting points from paragraph (1)(C) or paragraph (1)(D) of this subsection, these levels are included in the income average calculation. These units must be maintained at the indicated rent level throughout the Affordability Period. Scoring options include:

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points)

(3) Resident Supportive Services. (§2306.6710(b)(3) and (1)(G), and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of resident supportive services equaling at least ten points under §11.101(b)(7) of this chapter and meet the requirements of that section. (10 points)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. The service providers may be those on the Department list or other providers serving the general area. (1 point)

(4) Section 811 Project Rental Assistance Program (811 PRA) and Residents with Special Housing Needs. (§2306.6710(b)(4)) An Application may qualify to receive up to four (4) points under this paragraph. Only Applications unable to meet the requirements of subparagraph (A) of this paragraph may qualify for points under subparagraphs (B) and (C) of this paragraph. The point under subparagraph (D) of this paragraph is available to all Applications. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. The Department will work with Applicants to resolve any errors made in good faith pertaining to 811 PRA to allow the Application to maintain the requested points.

(A) Section 811 Project Rental Assistance Program (811 PRA). An Application may qualify to receive three (3) points for participation in 811 PRA, as described in this subparagraph. The Applicant will comply with 10 TAC Chapter 8.

(i) An Applicant or Affiliate that Owns or Controls an Existing Development, including those that have been awarded but have not yet completed construction, that is eligible to participate in 811 PRA and commits at least 5% of its total Units to 811 PRA, unless

limited to fewer under 10 TAC §1.15 or 10 TAC Chapter 8. The same Units cannot be used to qualify for points in more than one Application. (3 points)

(ii) An Applicant commits at least 5% of the total Units in the proposed Development for participation in 811 PRA, unless limited to fewer under 10 TAC §1.15 or 10 TAC Chapter 8. (3 points)

(B) The Development commits at least 5% of the total Units to Persons with Special Housing Needs as described in §11.1(d)(118)(C)(vii) plus Colonia residents, Persons with a Disability, and farmworkers. The Owner agrees to the following. (2 points)

(i) Specifically market Units to Persons with Special Housing Needs throughout the Compliance Period (unless otherwise permitted by the Department).

(ii) For an initial minimum twelve-month period, Units must either be occupied by Persons with Special Housing Needs or held vacant (unless the Units receive HOME funds from any source).

(C) The Development has committed Units under subparagraph (B) of this paragraph and the applicant also commits to the following. (1 point)

(i) Specifically market at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers throughout the Compliance Period (unless otherwise permitted by the Department). Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history.

(ii) For an initial minimum six-month period in Urban subregions, and an initial three-month period in Rural subregions, Units must either be occupied by Persons referred or held vacant (unless the Units receive HOME funds from any source). After the initial six-month or three-month period, the Owner will provide quarterly notifications to the Continuum of Care and other local homeless service providers on the availability of Units.

(D) The Development is Supportive Housing, on a site owned by the U.S. Department of Veterans Affairs (VA), and has a proposed occupancy preference or limitation for Veterans or a subgroup of only Veterans that is required or allowed by other federal or state financing by the Full Application Delivery Date. (1 point)

(5) Opportunity Index. Based on the ACS data, a Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) below.

(A) If it is located entirely within a census tract with a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and meets the requirements in clause (i),(ii), or (iii) below:

(i) a median household income in the two highest quartiles among census tracts within the uniform service region (2 points); or

(ii) a median household income in the third quartile among census tracts within the region, is contiguous to a census tract in the first or second quartile among tracts for median household income in the region that has a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and the Site is no more than two miles from the boundary between the census tracts (1 point); or

(iii) The Site is in a Rural Area and a Place that experienced an increase in population since the 2010 Decennial Census according to the Site Demographics Characteristics Report. (1 point)

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the factors in clause (i) or (ii) of this subparagraph. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. No member of the Applicant or Affiliates can have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development. The NeighborhoodScout report must include the date.

(i) Applications for Developments located in an Urban Area (unless competing in the USDA Set-Aside) may qualify to receive points through a combination of requirements in subclauses (I) - (XVI) of this clause.

(I) The Site is on a route with sidewalks for pedestrians that is 1/2 mile or less from either a multiuse hike-bike trail or the entrance to a public park with a playground. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point)

(II) The Site is on a route with sidewalks that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Applicants may select only one of the following:

(-a-) 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday) (1 point); or

(-b-) 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week (2 points)

(III) The Site is within two miles of a full-service grocery store described under §11.7(2)(A)(iii). (2 points)

(IV) The Site is within two miles of a pharmacy. For the purposes of this subclause only, the pharmacy may qualify if within the same building as a grocery store. (2 points)

(V) The Site is within four miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices do not qualify. (1 point)

(VI) The Site is within three miles of a center licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Site is in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by either neighborhoodscout.com or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the Site's census tract. (1 point)

(VIII) The Site is within two miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Site is within six miles of an accredited university or community college (including two-year colleges), as confirmed by the Texas Higher Education Coordination Board (THECB), with a physical campus where classes are regularly held. Universities must confer bachelor's degrees and community colleges must confer at least associate's degrees. Online-only institutions do not qualify. (1 point)

(X) The Site is in a census tract where 27% or more of adults age 25 and older have an Associate's Degree or higher as tabulated by the ACS 5-year Estimate. (1 point)

(XI) The Site is within two miles of an indoor recreation facility available to the public, including but not limited to a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities does not qualify. (1 point)

(XII) The Site is within two miles of an outdoor, dedicated, and permanent recreation facility available to the public, including but not limited to swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) The Site is within two miles of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (not exclusively for members or a congregation). (1 point)

(XIV) The Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(XV) At Application the Site is in a county with a population of 1.2 million or more, but less than 4 million, and is not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center, which include all providers listed under the Veteran's Health Administration categories, excluding Benefits Administration offices, listed at this link https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=ALL, and has federal or state financing that requires or allows preference for leasing units in the Development to low income veterans, and agrees to provide that preference. (1 point) (§2306.6710(b)(4))

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XIV) of this clause.

(I) The Site is within five miles of a full-service grocery store described under §11.7(2)(A)(iii). (2 points)

(II) The Site is within five miles of a pharmacy. For the purposes of this subclause only, the pharmacy may qualify if within the same building as a grocery store. (2 points)

(III) The Site is within five miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices do not qualify. (1 point)

(IV) The Site is within five miles of a center that is licensed by the DFPS specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(V) The Site is in a census tract with a property crime rate 26 per 1,000 persons or less, as defined by either neighborhoodscout.com or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract. (1 point)

(VI) The Site is within five miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(VII) The Site is within five miles of a public park with a playground. (1 point)

(VIII) The Site is within fifteen miles of an accredited university or community college (including two-year colleges), as confirmed by THECB, with a physical campus where classes are regularly held. Universities must confer bachelor's degrees and community colleges must confer at least associate's degrees. Online-only institutions do not qualify. (1 point)

(IX) The Site is in a census tract where 27% or more of adults age 25 and older have an Associate's Degree or higher as tabulated by the ACS 5-year Estimate. (1 point)

(X) The Site is within four miles of an indoor recreation facility available to the public including but not limited to a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities does not qualify. (1 point)

(XI) The Site is within four miles of an outdoor, dedicated, and permanent recreation facility available to the public including but are not limited to swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XII) The Site is within four miles of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (not exclusively for members or a congregation). (1 point)

(XIII) The Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(6) Underserved Area. An Application may qualify to receive up to five (5) points if the Site meets any one of the criteria described in subparagraphs (A) - (G) of this paragraph; an Applicant is limited to selecting one subparagraph. If an Application qualifies for points under paragraph (5) of this subsection it is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured in whole years (not month and date) and calculated by deducting the Board Approval year on the Site Demographics Characteristics report from the current year. The Application must include evidence that the Site meets the requirements. ((§§2306.6725(a)(4) and (b)(2); 2306.127(3))

(A) The Site is wholly or partially within the boundaries of a colonia as determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. (5 points) (§2306.127(3)

(B) The Site is entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas

Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period. (1 point) (§2306.127(3)

(C) The Site is entirely within a census tract that does not have another Development that was awarded 20 or fewer years ago that serves the same Target Population as the proposed Development. The same Development's prior allocation(s) do not count as another development for the purposes of this scoring item. (5 points) (§2306.6725(b)(2)

(D) For areas not scoring points for subparagraph (C), the Site is entirely within a census tract that does not have another Development that was awarded 15 or fewer years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. (4 points)

(E) For areas not scoring points for subparagraphs (C) or (D), the Site is entirely within a census tract that does not have another Development that was awarded 10 or fewer years ago according to the Department's property inventory in the Site Demographic Characteristics Report. (3 points)

(F) Neither the census tract containing the Site nor any of its contiguous census tracts have another Development awarded 10 or fewer years ago that serves the same Target Population as the proposed Development. The same Development's prior allocation(s) do not count as another development for the purposes of this scoring item. This item will apply to Sites located entirely in a Place, or its ETJ, with a population of 50,000 or more for Urban subregions and 10,000 or more for Rural subregions, and will not apply in the At-Risk or USDA Set-Asides. (5 points)

(i) The Site may intersect the boundaries of multiple Places so long as each has a population of at least 50,000 for Urban subregions, and 10,000 for Rural subregions.

(ii) Contiguous census tracts include those that touch at a point.

(G) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and has not received federal funding or LIHTC equity for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points)

(H) The Site is entirely within a Census tract with a median household income in the highest quartile among Census tracts within the uniform service region according to the Site Demographics Characteristics Report. (5 points)

(7) Proximity to Job Areas. An Application may qualify to receive up to four (4) points if the Site is in one of the areas described in subparagraphs (A), (B), or (C) of this paragraph, and the Application contains evidence substantiating qualification for the points. The data considered is solely what is available through US Census' OnTheMap tool posted on or before August 1, 2026. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. The Applicant will import OnTheMap's GPS coordinates for the Site and submit the resulting chart/map (including the report date). This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(A) Proximity to Jobs. Sites in Urban subregions may qualify for points under this subparagraph if within five miles of:

(i) 10,000 jobs (4 points)

(ii) 8,000 jobs (3 points)

(iii) 6,500 jobs (2 points)

(iv) 4,500 jobs (1 point)

(B) Proximity to Jobs. Sites in Rural subregions may qualify for points under this subparagraph if within five miles of:

(i) 6,000 jobs (4 points)

(ii) 4,500 jobs (3 points)

(iii) 3,000 jobs (2 points)

(iv) 1,500 jobs (1 point)

(C) Access to Jobs. A Site which qualifies for at least 2 points under subparagraph (A) or (B) may qualify for up to 2 additional points under this subparagraph if the Site is on a route, with sidewalks within one half-mile from the entrance of a public transportation stop or station with a route schedule that provides regularly scheduled service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (2 points)

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must: be dated on or before the Final Input from Elected Officials Delivery Date; be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter; and specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. Resolutions received by the Department stating the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded for that Governing Body. If a Site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, an Application will receive positive points only if a resolution is obtained from both entities. Once a resolution is submitted to the Department it may not be changed or withdrawn.

(A) Within a municipality, the Application will receive points for a resolution from the municipality's Governing Body expressly stating it:

(i) supports the Application or Development; (17 points) or

(ii) has no objection to the Application or Development. (14 points)

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) and clause (iii) or (iv) of this subparagraph for a resolution from the Governing Body expressly stating the following.

(i) The municipality supports the Application or Development. (8.5 points)

(ii) The municipality has no objection to the Application or Development. (7 points)

(iii) The county supports the Application or Development. (8.5 points)

(iv) The county has no objection to the Application or Development. (7 points)

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, the Application will receive points for a resolution from the county's Governing Body expressly stating it:

(i) supports the Application or Development; (17 points) or

(ii) has no objection to the Application or Development. (14 points)

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant and must be a financial benefit to the Development (a source on the Sources and Uses form or lower cost in the Development Cost Schedule). Documentation must include a letter from an official of a relevant municipality, county, or other instrumentality stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development that equals $500 or more in Urban subregions or $250 or more in Rural subregions, and describe the value and form of the contribution (reduced fees or gap funding and any caveats to delivering). Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if the Site is in a declared disaster area under the Tex. Gov't Code §418.014 at the time of Application submission or at any time within the two-year period preceding the date of submission.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization in current, valid existence with boundaries that contain the entire Site, and on record with the Secretary of State or relevant county 30 days prior to the beginning of the Application Acceptance period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all requirements in subparagraph (A) of this paragraph and be sent by the Neighborhood Organization to the Department (letters only included in the Application will not qualify).

(A) Statement Requirements. An organization must make the following affirmative certifications or statements to be considered a Neighborhood Organization for purposes of this paragraph:

(i) The Neighborhood Organization's name, a written description and map of it's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on its behalf.

(ii) The boundaries contain the entire Site and the Neighborhood Organization meets the definition in Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households.

(iii) No person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Application requiring their listing participated in any way in the deliberations of or votes taken by the Neighborhood Organization.

(iv) At least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization.

(v) An explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason as the basis.

(B) Technical Assistance. If no Neighborhood Organization exists or is on record, the Applicant, Owner, or Developer may provide technical assistance in creating one. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on only one of the clauses (i) - (vi) of this subparagraph (not cumulative). Where the Department receives more than one written statement for an Application, the score will be the average of all.

(i) Nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement in opposition that qualified as QCP and whose boundaries remain unchanged.

(ii) Eight (8) points for explicitly stated support from a Neighborhood Organization.

(iii) Six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement in opposition that qualified as QCP and whose boundaries remain unchanged.

(iv) Four (4) points for statements of neutrality, statements not explicitly stating support or opposition, or no statement of either support, opposition or neutrality from a Neighborhood Organization.

(v) Four (4) points for areas where no Neighborhood Organization meets the requirements of this section.

(vi) Zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations (including zoning) of a local Governmental Entity (including municipality, county, school district) with jurisdiction or oversight. Any such challenge must include the basis and be submitted by the Challenges to Neighborhood Organization Opposition Delivery Date. The Neighborhood Organization expressing opposition will have seven calendar days to provide information. The Department will provide all such materials and its analysis to a fact finder of its choice for a determination. The fact finder will make determinations only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed. If the Neighborhood Organization does not respond within seven days or the fact finder finds its statements to be contrary to findings or determinations of a local Government Entity, then the Application will receive four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(f) and (g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements (or statements not specifically referring to the Development), or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must

(i) be on the State Representative's letterhead or submitted in such a manner as to verify the sender,

(ii) be signed by the State Representative,

(iii) identify the specific Development

(iv) express whether the letter conveys support, neutrality, or opposition, and

(v) be submitted no later than the Final Input from Elected Officials Delivery Date. The Department will accept documentation with the Application or through delivery either from the Applicant or the State Representative. Once a letter is submitted to the Department it may not be changed or withdrawn. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Site. A letter from a state representative expressing the level of community support may be expressly based on an understanding or assessments of indications of support by others. In the letter a representative may express their position with or without expressing their personal views.

(B) No Letter from a State Representative. To qualify under this subparagraph, the Department must receive no written statement for an Application from the State Representative whose district boundaries include the Site, unless the sole content is to convey he or she will not provide a written statement. Points available under this subparagraph will be based on how an Application scores under paragraph (1) of this subsection. If a Site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, the Application will earn positive points only with a resolution from both entities. For an Application with a Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive the following points for a resolution from the Governing Body of that municipality expressly setting forth its position on the Application or Development:

(I) Eight (8) points for support; or

(II) Zero (0) points for no objection or resolution; or

(III) Negative eight (-8) points for opposition.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph, and under subclause (IV) or (V) or (VI) of this subparagraph for a resolution from the Governing Body expressly setting forth its position on the Application or Development.

(I) Four (4) points for municipality support.

(II) Zero (0) points for a municipality no objection resolution.

(III) Negative four (-4) points for municipality opposition.

(IV) Four (4) points for county support.

(V) Zero (0) points for no objection or resolution from the county.

(VI) Negative four (-4) points for county opposition.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, the Application will receive the following points for a resolution from the Governing Body of the county expressly setting forth its position on the Application or Development:

(I) Eight (8) points for support; or

(II) Zero (0) points for no objection or resolution; or

(III) Negative eight (-8) points for opposition.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Site does not fall within the boundaries of any qualifying Neighborhood Organization or one has given either no statement or a statement of neutrality (as described in subparagraph B(4)(C)(iv) or (v)), then an Application may receive up to a maximum of four (4) points for letters that qualify for points under subparagraphs (A), (B), or (C) of this paragraph submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. An Applicant electing this option will lose one (1) point from the score under this paragraph for each letter in opposition from an organization that would otherwise qualify under this paragraph (not to be lower than zero (0)).

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community where the Site is located identifying the specific Development and stating support of the specific Development at the proposed location. The organization must be qualified as tax exempt and have as a primary purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community (e.g., schools, fire protection, law enforcement, city-wide transit, flood mitigation). Neighborhood organizations, governmental entities (excluding Special Management Districts described in subparagraph C) and taxing entities do not qualify for purposes of this subparagraph. The Applicant must provide evidence the organization is tax exempt from a federal or state government database and participates in the community in which the Site is located (including a listing of services or members, brochures, annual reports etc.).

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Site and that does not meet the requirements of a Neighborhood Organization under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date, include the Site.

(D) The Department will not consider either input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or scoring it determines to be contrary to affirmatively furthering fair housing. The Department may refer matters to the Texas Workforce Commission for investigation, but doing so will not, standing alone, terminate the Application. Staff will report all such referrals to the Board.

(7) Concerted Revitalization Plan or Opportunity Zone. An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(5) of this section.

(A) Concerted Revitalization Plans for Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Site is geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.

(ii) A plan may consist of one or two (at most) complementary documents the municipality approved as a plan to revitalize the specific area and may be a Tax Increment Reinvestment Zone, Tax Increment Finance, or similar plan. A city- or county-wide comprehensive plan (including HUD consolidated or one-year action plans) does not qualify unless it includes plans for specific areas targeted for revitalization and meets all requirements of this section.

(iii) The Site must be entirely located within the targeted revitalization area.

(iv) The Applicant must submit the plan and supporting documentation using the CRP Application Packet. The Application must include a description of where to find the specific information required below. The plan must:

(I) have been published by the municipality or county in which the Site is located; and

(II) be current at the time of Application.

(v) If the Application includes an acceptable Concerted Revitalization Plan, the Department will award points as follows:

(I) the Site is or is not in a QCT and includes a letter from the appropriate municipal official (or county if the Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to its concerted revitalization efforts (7 points); or

(II) the proposed Site does not have a letter. (5 points)

(B) For Developments located in a Rural Area, the Rehabilitation or demolition and Reconstruction of a Development

(i) that has been leased and occupied at 85% or greater for the six months preceding Application by low income households, and

(ii) which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing using USDA and/or HUD program(s). The occupancy percentage will not include Units that the SCR or CNA confirms cannot be occupied due to needed repairs. A locality must determine demolition and relocation of units to be necessary either to comply with the Affirmatively Furthering Fair Housing Rule or to create an acceptable distance from Undesirable Site Features or Neighborhood Risk Factors. (7 points)

(C) The Site is located entirely within a Federal Opportunity Zone as defined by the Governor no later than the Full Application Delivery Date. (7 points)

(e) Criteria promoting the efficient use of limited resources and Applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) All eligible Applications automatically receive twenty-six (26) points, conditioned upon the successful completion of underwriting in accordance with this chapter.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F) and (§2306.67022(b)-(c)) For the purposes of this scoring item, Eligible Building Costs are Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation (other than structured parking), and voluntary Eligible Hard Costs include general contractor overhead, profit, and general requirements. The square footage used will be the NRA. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. For a Supportive Housing Development the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned. The Department will annually adjust the square foot cost targets in this item by the increase in the Consumer Price Indexes for All Urban Consumers between the two most recently available full years.

(A) Applications proposing New Construction or Reconstruction or Adaptive Reuse will receive twelve (12) points if:

(i) the voluntary Eligible Building Cost per square foot is less than or equal to $159.20 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $212.66 per square foot.

(B) Applications proposing New Construction or Reconstruction will receive eleven (11) points if:

(i) the voluntary Eligible Building Cost per square foot is less than or equal to $169.89 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $223.35 per square foot.

(C) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points for including less than or equal to the following amounts of voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis:

(i) $212.66 per square foot; (12 points) or

(ii) $275.63 per square foot, if located in an Urban Area and qualify for 5 or more points under subsection (c)(5)(A) and (B) of this section; (12 points) or

(iii) $275.63 per square foot. (11 points)

(3) Pre-application Participation. (§2306.6704) An Application will receive six (6) points for submitting a pre-application by the Pre-Application Final Delivery Date and meeting the requirements described in subparagraphs (A) - (K) below.

(A) The total number of Units does not increase by more than 10% from pre-application to Application.

(B) The designation of the proposed Development as Rural or Urban remains the same.

(C) The proposed Development serves the same Target Population.

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, or Nonprofit).

(E) The Application final score (inclusive of only scoring items reflected on the self-score form) does not vary by more than four (4) points from the pre-application self-score.

(F) If the Application claims points related to Underserved Area and/or Proximity to Jobs, the point elections do not change from the pre-application self-score and the supporting documentation for these points is substantially similar to what was submitted with the pre-application.

(G) The Site at Application is at least in part the Site at pre-application, and the census tract number(s) listed at pre-application is the same at Application. The full Application does not require notification to any person or entity not required to have been notified at pre-application.

(H) The Tie Breaker distance established in 10 TAC §11.7(2) represented at pre-application cannot improve at full Application.

(I) For Applications funded through the USDA Set-Aside; year of initial construction as a residential Development remains the same or is not earlier.

(J) If the Applicant elects a high quality Pre-Kindergarten under §11.6(3)(C)(v), this election does not change at full Application.

(K) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count), no more than 50% of the Developer Fee is deferred, and the Housing Tax Credit funding request is less than one of the levels of Total Housing Development Cost in clauses (i) - (iv) below:

(i) 10%, and the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding (the Application must include a commitment); (3 points) or

(ii) 10% (3 points); or

(iii) 11% (2 points); or

(iv) 12% (1 point)

(B) The calculations in subparagraph (A) above will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Staff will perform the calculation again and adjust the score (if necessary) if an Administrative Deficiency requires a change in either form. Points may not increase based on changes to the Application.

(5) Extended Affordability. (§§2306.6725(a)(5) and (7); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2)) An Application may qualify to receive up to four (4) points for the Owner agreeing to extend the Affordability Period to:

(A) 45 years total; (4 points)

(B) 40 years total; (3 points) or

(C) 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6)).

(A) An Application may qualify to receive two (2) points if Development will receive historic tax credits before or by the issuance of Forms 8609 and has:

(i) under 100 total Units and at least 55% will be constructed fully or partially within the Certified Historic Structure, or

(ii) 100 total Units or more and at least 55 will be constructed fully or partially within the Certified Historic Structure.

(B) The Application must include documentation from the Texas Historical Commission that

(i) the Property is currently a Certified Historic Structure, or

(ii) it received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year and documentation determining preliminary eligibility for Certified Historic Structure.

(C) An Application may not receive these points if it involves a Development that was previously awarded Competitive HTCs through an Application that earned points based on eligibility of a Certified Historic Structure. (2 points)

(7) Right of First Refusal. (§2306.6725(b)(1)). An Application may receive one (1) point under subparagraphs (A) or (B) below.

(A) The Owner will agree to provide a right of first refusal upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and §10.407 and §10.408 of this title.

(B) The Development at the time of LURA execution is single family detached homes on separate lots or is organized as condominiums under Chapter 81 or 82 of the Texas Property Code and commits to offer a right of first refusal to the tenants to purchase the dwelling at a selected term between the end of the Compliance Period and the Extended Use Period. Owners may attribute a de minimis amount of a participating tenant's rent to the purchase of a Unit, as reflected in the LURA. The Applicant must provide a description of how they will

(i) implement the 'rent-to-own' activity,

(ii) make tenants aware of the opportunity, and

(iii) implement the right at the end of the selected term. If a Development has National Housing Trust Funds, HOME-ARP, or another MFDL source where homeownership is not an eligible activity, the right of first refusal may not be earlier than the end of the Federal Affordability Period.

(8) Readiness to Proceed. The Application includes a certification that site acquisition and building construction permit submission will occur on or before the last day of March of the following year or as otherwise permitted under subparagraph (B) below (not available in the At-Risk or USDA Set-Asides). (1 point)

(A) Failure to meet the March deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board. The Board cannot and will not waive the deadline.

(B) Applications awarded from the waiting list will receive an extension of the March deadline equivalent to the period of time between the late July meeting and the date that the Commitment Notice for the Application is issued.

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. (§2306.6710(b)(2)) Staff may recommend, and the Board may find, that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round, or assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For items pertaining to non-statutory deadlines, the Board or Executive Director (as applicable) may make an exception to the penalty based on an affirmative finding that the need for a deadline extension was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. The Department must notify the affected party of any matter to be presented for final determination by the Board not less than 14 days prior to the scheduled Board meeting. The Executive Director may determine the matter does not warrant point deduction only for paragraph (1) of this subsection, and if so may issue a formal notice after disclosure. Any deductions assessed by the Board for paragraph (1), (2), (3), or (4) of this subsection based on an HTC Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application.

(1) The Applicant or Affiliate requested an extension of or failed to meet the original Carryover submission or 10% Test deadline(s) (relating to either submission or expenditure).

(2) The Applicant or Affiliate failed to meet federal commitment or expenditure requirements, deadlines to enter into a Contract, or close a Direct Loan, or did not meet benchmarks of the Contract.

(3) The Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the Readiness to Proceed deadline to both acquire the Site and provide evidence of permit submission under subsection (e)(8) of this section.

(4) The Developer or Principal of the Applicant has violated or violates the Adherence to Obligations.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

(a) The Third Party Request for Administrative Deficiency (RFAD) allows an unrelated person or entity to bring new, material information about an Application to staff's attention.

(b) Staff will not act on a RFAD if it describes Application review process matters and contains only information present in the Application.

(c) The RFAD and any testimony regarding its result may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). The Department will disregard any RFAD that questions a staff decision regarding scoring of an Application filed by another Applicant.

(d) Upon filing, requestors must provide all information that the requestor offers in support of the deficiency; copy of the request and supporting information directly to the Applicant; and sufficient credible evidence that, if confirmed, would substantiate the deficiency request. The Department will not consider assertions not accompanied by supporting documentation susceptible to confirmation or that express the requestor's opinion.

(e) Staff will provide to the Board a written report summarizing each RFAD and the way it was addressed. Interested persons may provide testimony on this report before the Board accepts the report. The Board may either change staff's conclusion if necessary to bring the result into compliance with applicable laws and rules or remand it back to staff based on public testimony, which may result in a reaffirmation, reversal, or modification.

(f) The Board will consider testimony arguing staff's determination only if the requestor can show staff failed to follow the applicable rule. The requestor may not appeal the RFAD results.

(g) The Applicant may appeal a scoring notice or termination notice that results from a RFAD (as described in §11.902 of this chapter).

(h) The Board and staff will consider information received after the RFAD deadline only if it warrants a termination notice.

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

Filed with the Office of the Secretary of State on September 4, 2026.

TRD-202603891

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions.

(1) Floodplain.

(A) New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must fully comply with the National Flood Protection Act and all applicable federal, state, and local statutory and regulatory requirements. Even if not required by such provisions, all finished ground floor elevations must be at least one foot above the floodplain and parking and drive areas can be no lower than six inches below the floodplain.

(B) Applicants requesting NHTF, HOME, HOME-ARP, or NSP PI funds from the Department must meet the applicable federal environmental provisions in effect at the time of executing the Contract between the Department and Owner.

(C) If no FEMA Flood Insurance Rate Maps are available for the proposed Site, the Application must include flood zone documentation identifying the 100 year floodplain from the local government with jurisdiction. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement if not requesting NHTF from the Department.

(D) All Developments located within a 100 year floodplain must state such status in the Tenant Rights and Resource Guide and encourage residents to consider getting appropriate insurance or take necessary precautions.

(E) Where existing and ongoing federal assistance is not applicable, Rehabilitation (excluding Reconstruction) Developments are allowed in the 100 year floodplain if the Application includes documentation that either the local government can substantiate having taken sufficient mitigation efforts or a Third Party engineer certifies the existing structures meet the requirements applicable for New Construction or Reconstruction Developments.

(2) Undesirable Site Features.

(A) An Application will be ineligible due to an Undesirable Site Feature unless the Board or staff determine it is mitigated. A Competitive HTC Application will be ineligible if staff identifies it did not disclose an undesirable site feature reflected in clause (i) - (x) of subparagraph (E). Staff may issue an Administrative Deficiency for an undesirable site feature not listed in this paragraph or covered under

clause (xi) of subparagraph (E) or defer to the Board to decide whether a feature is undesirable.

(B) Staff may grant an exemption (potentially including mitigation) for Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or VA and Developments encumbered by a TDHCA LURA and Historic Developments that otherwise would qualify under §11.9(e)(6) of this chapter. An Applicant must request such an exemption at the time of or prior to filing the Application.

(C) Pre-determinations of Site eligibility for a prior calendar year will not be binding in the current one. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may request a pre-determination at pre-application, or utilizing a local issuer, the Applicant may request a pre-determination prior to Application submission. Any determination by staff or the Board based on the documentation presented is preliminary. Additional or changed information changing while the Application is under review may result in an Administrative Deficiency or re-evaluation.

(D) The proposed Site and all construction thereon must comply with all applicable state and federal requirements regarding separation for safety purposes. The Department will defer to a state or federal cognizant agency's requirement for a minimum separation between housing and a new facility under its jurisdiction.

(E) For any Undesirable Site Feature that HUD's siting requirements at 24 CFR Part 51, Subpart C address, the Department will consider compliance with those requirements acceptable mitigation under this rule.

(F) The Undesirable Site Features include those described in clauses (i) - (xi) of this subparagraph. The distances are from the nearest boundary of the Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted. Where a local ordinance specifies smaller distances between an undesirable feature and multifamily development, an Application may use such smaller distances (must include documentation). Pre-existing zoning is not a local ordinance.

(i) Sites within 300 feet of junkyards defined as stated in Texas Transportation Code §396.001.

(ii) Sites within 300 feet of an active solid waste facility, sanitary landfill facility, waste transfer station, or illegal dumping sites (as identified by the local municipality).

(iii) Sites within 300 feet of a sexually-oriented business defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality.

(iv) Sites located within 500 feet of active railroad tracks, measured from the closest rail to the Site boundary, unless:

(I) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(II) the Applicant has engaged a qualified Third Party to perform a noise assessment and commits to perform sound mitigation in accordance with HUD standards as if they applied; or

(III) the railroad is commuter or light rail.

(v) Sites within 500 feet of facilities consistent with the general characteristics of heavy industry, such as requiring extensive use of land and machinery, producing high levels of external noise (manufacturing plants), or maintaining fuel storage facilities. Does not include gas stations and other similar facilities.

(vi) Sites within 10 miles of a nuclear plant.

(vii) Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport.

(viii) Sites that contain or are adjacent to an easement for one or more underground or aboveground pipelines carrying highly volatile liquids must include a plan for developing near the pipeline(s) and any mitigation in accordance with a report conforming to the Pipelines and Informed Planning Alliance.

(ix) Sites within two miles of refineries capable of refining more than 100,000 barrels of oil daily.

(x) Sites in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation. An Application will remain eligible if the Noise Contour is less than 70 decibels and the Applicant has engaged a qualified Third Party to perform a noise assessment and commits to perform sound mitigation in accordance with HUD standards as if they applied.

(xi) Any Site staff deems unacceptable, including (without limitation) those with exposure to an environmental factor that may adversely affect the health and safety of the residents or otherwise render the Site inappropriate for housing and which cannot be adequately mitigated. Staff will provide notice and an opportunity to respond to information not included in the Application resulting in a Site being unacceptable.

(3) Neighborhood Risk Factors.

(A) A Neighborhood Risk Factor will render an application ineligible absent a determination of acceptable mitigation by staff or the Board. Applicants must disclose the risk factor which will result in an assessment of the Site and neighborhood, and may include a site visit. Staff will terminate Competitive HTC Applications failing to disclose.

(B) Pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications. For Tax-Exempt Bond Developments

(i) where the Department is the Issuer, the Applicant may submit the documentation described under subparagraph (C) of this paragraph at pre-application, or

(ii) utilizing a local issuer may request a pre-determination prior to Application submission. Any determination by staff or the Board based on the documentation presented is preliminary. Additional or changed information while the Application is under review may result in an Administrative Deficiency or re-evaluation.

(C) The Site is New Construction or Reconstruction in Urban Area and either in or adjacent to a census tract where the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Adjacent means a boundary less than 500 feet from the proposed Site and not separated by a natural barrier (river, lake) or an intervening restricted area (military installation). Rehabilitation developments (excluding Reconstruction) with ongoing and existing federal assistance from HUD, USDA, or VA, and Developments encumbered by a TDHCA LURA are exempt.

(i) Mitigation must include documentation of efforts underway at the time of Application, and include the measures described in clauses ((l) or (ll)) of this subparagraph or such other mitigation the Applicant determines appropriate to support eligibility. Preservation alone is inadequate to support a conclusion of eligibility. If staff determines a Site is ineligible, the Applicant may not present new information in an appeal to the Board.

(ii) Evidence by the most qualified person (Police Chief, Sheriff, or individual responsible for the relevant beat or area) that the data and evidence establish a reasonable basis to conclude that Part I violent crime either

(I) is currently below 18 per 1,000 persons (neighborhoodScout.com is inaccurate), or

(II) is trending favorably and is expected within two years to be below 18 per 1,000 persons.

(iii) Part I violent crime data is from the applicable police or sheriff's department for the beat or area based on its population or Part I violent crime data within the beat or area that encompasses the census tract, calculated based on the census tract population. The data must include incidents reported during the entire calendar year before the Application year. Staff may request violent crimes reported through the date of Application submission as part of the assessment. Such data must show that it is reasonable to assume, based on a demonstrated positive trend, a crime rate below 18 per 1,000 persons by the time the Development places into service and that the crime rate is not of a nature or severity to render the Site ineligible. An Application may additionally provide, or staff may require, a written statement from the most qualified person, that includes a description of efforts and results of addressing issues of crime, including whether there is a reasonable expectation that crime rates will trend down based on the efforts.

(4) A New Construction Development (or reconstruction requesting NHTF), as defined by the applicable federal fund source, requesting federal funds must meet the applicable Site and Neighborhood Standards.

(b) Development Requirements and Restrictions.

(1) Ineligible Developments. A Development will be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General:

(i) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing under Code §42(i)(3)(B)(iii) and (iv).

(ii) Any building(s) with four or more stories that does not include an elevator. Not applicable where topography or other Site characteristics require basement splits such that tenants will not have to walk more than two stories to their Unit and all Development amenities.

(iii) Provides on-site continual or frequent nursing, medical, or psychiatric services. See IRS Revenue Ruling 98-47 for clarification of assisted living.

(iv) Proposes population limitations that violate §1.15 of this title.

(v) Will not meet the general public use requirement under Treasury Regulation, §1.42-9.

(vi) Utilizing a Direct Loan subject to the Housing and Community Development Act, 104(d) requirements proposing Rehabilitation or Reconstruction and the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision.

(vii) New Construction or Reconstruction proposing more than 35.00% efficiency and/or one-Bedroom Units (other than Elderly or Supportive Housing Developments). Units that are part of a Historic structure do not count when determining this requirement.

(viii) Competitive HTC Applications that involve any existing HTC Development that has any building that placed in service on or after January 1, 2008.

(ix) Applications with a Total Housing Development Cost of $500,000 or more per Unit.

(x) Competitive HTC that scores fewer than 120 total points, inclusive of any scoring reductions.

(xi) Site is in a census tract that has a poverty rate above 40% for individuals (or 55% in regions 11 and 13) unless there is a resolution from the Governing Body of the appropriate municipality or county acknowledging the high poverty rate and authorizing the Development to move forward (from the county if in the ETJ). Rehabilitation Developments with ongoing and existing federal assistance from HUD, USDA, or VA, and Developments encumbered by a TDHCA LURA are exempt.

(B) Ineligibility of Elderly Developments includes:

(i) two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) any containing Units with more than two Bedrooms, excluding up to three specifically-designated employee Units; or

(iii) any New Construction, Reconstruction, or Adaptive Reuse proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Areas of High Crime. Any Development involving New Construction or Adaptive Reuse is ineligible with no opportunity for mitigation if

(i) located in an area described in (a)(3)(C) of this subsection and

(ii) for which mitigation submitted still yields a Part I violent crime rate greater than 18 per 1,000 persons annually. The Board will document the reason(s) for granting an Appeal of staff's determination.

(2) Development Size Limitations. The minimum Development size is 16 Units. The maximum is 80 units for Competitive HTC or Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter. There is no maximum for Rehabilitation Developments.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance and meet the minimum Rehabilitation amounts of Building Costs and Site Work in subparagraphs (A) - (C) of this paragraph. Developments must maintain such amounts through the issuance of IRS Forms 8609 using the earliest building placed in service date.

(A) For Housing Tax Credit Developments with USDA financing the Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work.

(B) For Tax-Exempt Bond Developments less than 20 years old (based on the placed in service date), the Rehabilitation will involve at least $25,000 per Unit or $35,000 if greater than or equal to 20 years old. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new, staff may allow the cost standard under subparagraph (A) of this paragraph.

(C) For all other Developments, the Rehabilitation will involve at least $35,000 per Unit.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all amenities in subparagraphs (A) - (O) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (L), (N), and (O) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (H) or (N) of this paragraph but must provide access to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Owners must provide Residents written notice of the Development's applicable required amenities. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits based on evidence submitted with the request for amendment that the Texas Historical Commission (THC) or National Park Service (NPS) has not approved it. Certain amenities are not eligible for Direct Loan funding.

(A) All Units have connections available using current technology for data and phone.

(B) Laundry connections.

(C) Exhaust/vent fans (vented to the outside) in the bathrooms.

(D) Screens on all operable windows (unless not approved by THC or NPS).

(E) Disposal (not required for USDA Rehabilitation).

(F) Energy-Star or equivalently rated dishwasher; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit.

(G) Energy-Star or equivalently rated refrigerator.

(H) Oven/Range.

(I) Blinds or window coverings for all windows.

(J) At least one Energy-Star or equivalently rated ceiling fan per Unit.

(K) Energy-Star or equivalently rated lighting in all Units.

(L) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) have heating provided by an electric heat pump system or natural gas and air-conditioning provided by an electric heat pump system; however, Rehabilitation Developments (excluding Reconstruction) where the heating and air conditioning systems are not replaced are exempt.

(M) Adequate parking spaces consistent with local code. If there is no local code the requirement is one and a half spaces per Unit for non-Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout the Affordability Period. The Application must include evidence of any requested waiver or variance of local code parking requirements.

(N) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work, not required if not approved by THC or NPS).

(O) Adequate accessible parking spaces consistent with federal and state requirements.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points in clauses (i) - (vi) below:

(i) 2 points for 16 to 40 Units;

(ii) 4 points for 41 to 76 Units;

(iii) 7 points for 77 to 99 Units;

(iv) 10 points for 100 to 149 Units;

(v) 14 points for 150 to 199 Units; or

(vi) 18 points for 200 or more Units.

(B) The points in this paragraph are not associated with any selection criteria. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Owners must provide residents written notice of the elections made. An amenity does not qualify under this paragraph if the Owner charges fees or deposits for it. Amenities must meet all applicable accessibility standards, including the Department's. Where a space or size requirement is not specified it must be reasonably adequate based on the Development size. All amenities must be available to all Units via an accessible route. The Department will apply the requirement to non-contiguous scattered site housing (excluding non-contiguous single family sites) based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. A Development of non-contiguous single family sites must provide a combination of unit and common amenities to equal the appropriate points under subparagraph (A) of this paragraph for the Development size. Amenities anticipated to be shared with a previous phase development cannot be claimed for purposes of meeting this requirement for a subsequent phase.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph. There is no requirement to select a specific number of amenities from each section. An Applicant can only count an amenity once; combined functions (library is part of a community room) will only qualify under one category.

(i) Community Space for Resident Supportive Services includes:

(I) An Application will qualify for half of the points required under §11.101(b)(5)(A)(i) - (vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and committing to all of items (-a-) - (-c-) below (unless more than 10% of the Units will be Supportive Housing single room occupancy).

(-a-) Space and Design. The educational space must be on-site; appropriately designed for an independent school district or open-enrollment charter school to operate a HQ Pre-K program; include at a minimum a bathroom and large closet in the classroom space; have limited and secure ingress and egress to the classroom space; and satisfy the requirements of all applicable building codes for school facilities. The Application must include a copy of the applicable current school facility code requirements, certifications from the Owner and Architect that they understand those space and design requirements, and acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider Agreement. The Applicant must enter into an agreement addressing all items described in subitems (-1-) - (-5-) below and submit it to the Department with or

before the Cost Certification. Failure to meet the deadline will be cause for rescission of the Carryover Agreement.

(-1-) Be between the Owner and an Educational Provider.

(-2-) Reflect that the Educational Provider will provide a HQ Pre-K program at the Site in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the Development and that is available for general public use (students residing elsewhere may attend).

(-3-) Reflect that the Owner will give the school or provider the option to operate the HQ Pre-K program until it elects to withdraw. The Owners will retain a right to terminate the agreement for good cause.

(-4-) Sets forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs arising as the result of operating the HQ Pre-K program.

(-5-) Includes a provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an Educational Provider becomes defunct or elects to withdraw from the agreement (as provided for in subitem (-b-)(-3-) above), the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties. If the Commissioner or Owner identifies another interested open-enrollment charter school or school district, the Owner must enter into a subsequent agreement with it to offer HQ Pre-K services. If another interested provider cannot be identified the Owner must notify the Commissioner annually of the availability of the space. If the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be in violation of its commitment.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children. Such room(s) must equal the lesser of 15 square feet times the total number of Units or 2,000 square feet. This space must include storage space, such as closets or cabinetry and be separate from any other community space but may include a full kitchen. (4 points)

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults. Such room(s) must equal the lesser of 10 square feet times the total number of Units or 1,000 square feet. This space must include storage space, such as closets or cabinetry and be separate from any other community space but may include a full kitchen. (2 points)

(IV) Service provider office in addition to leasing offices. (1 point)

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access limited to the Development's tenants. (1 point)

(II) Secured Entry (applicable only if all Unit entries are within the building's interior). (1 point)

(III) Twenty-four hour, seven days a week monitored (on-site or off-site) camera/security system in each building. (2 points)

(IV) Twenty-four hour, seven days a week recorded camera/security system in each building. (1 point)

(V) A courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and dispatches a courtesy patrol officer in a timely manner. (3 points)

(iii) Health/Fitness/Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities. (1 point)

(II) Fitness center indoors or in a designated room with climate control and that allows for after-hours access. Equipped with a variety of commercial use grade or quality fitness equipment (at least one item for every 40 Units): stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. This item and subclause (III) are mutually exclusive. (1 point)

(III) Fitness center, same as subclause (II) above other than twice as many items. This item and subclause (II) above are mutually exclusive. (2 points)

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot. Must be covered with enough shade canopy or awning to keep equipment cool and provide shade and ultraviolet protection. This item and subclause (V) below are mutually exclusive. (2 points)

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each. Must be covered with enough shade canopy or awning to keep equipment cool and provide shade and ultraviolet protection. This item and subclause (IV) above are mutually exclusive. (4 points)

(VI) Horseshoe pit, putting green, shuffleboard court, pool table, ping pong table, or similar equipment in a dedicated location accessible to all residents. (1 point)

(VII) Swimming pool with after-hours access. (5 points)

(VIII) Splash pad/water feature play area. (3 points)

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, Soccer, or Baseball Field). (2 points)

(iv) Design/Landscaping amenities include:

(I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas). (2 points)

(II) Enclosed community sun porch or covered community porch/patio. (1 point)

(III) Fully enclosed dog Park area (the perimeter fencing may be used for part of the enclosure) that allows tenant owned dogs to run off-leash (Development must allow dogs). (2 points)

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet. (2 points)

(V) Porte-cochere. (1 point)

(VI) Lighted pathways along all accessible routes. (1 point)

(VII) Resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water. (1 point)

(VIII) Each Unit above the first floor is accessible by at least two elevators. (2 points)

(v) Community Resources amenities include:

(I) Community laundry room with at least one washer and dryer for every 40 Units. (2 points)

(II) Permanently installed barbecue grill and picnic table, at least one of each for every 50 Units (1 point)

(III) Business center with workstations and seating, internet access, one printer and one scanner (may be integrated with the printer), and either two desktop computers or laptops available to check-out upon request. (2 points)

(IV) Furnished Community room. (2 points)

(V) Library with an accessible sitting area (separate from the community room) (1 point)

(VI) Activity Room stocked with supplies (Arts and Crafts, board games, etc.). (2 points)

(VII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating. (3 points)

(VIII) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment, DVD player or a streaming service (no cost to residents), and seating. (3 points)

(IX) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse or community building. (1 point)

(X) Same as (IX) above but with coverage throughout the Development. (2 points)

(XI) Bicycle parking within reasonable proximity to each residential building for at least one for every five Units that allows for bicycles to be locked (lock not required to be provided to tenant). (1 point)

(XII) Automated Package Lockers or secure package room that can be accessed by residents 24/7 and at no charge. To qualify there needs to be at least one locker for every eight residential units. (2 points)

(XIII) Recycling Service (includes a storage location and service for pick-up). (1 point)

(XIV) Community car vacuum station. (1 point)

(XV) Access to on-site bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 Units. (1 point)

(XVI) A covered outdoor area with seating to be used as a waiting area for public transportation or a school bus. (1 point)

(6) Unit Requirements.

(A) Unit Sizes. All New Construction or Reconstruction Units must meet the minimum sizes in clauses (i) - (v) of this subparagraph (not associated with any selection criteria). Rehabilitation Units (excluding Reconstruction) and Supportive Housing Developments are exempt.

(i) 450 square feet for an Efficiency Unit;

(ii) 550 square feet for a one Bedroom Unit;

(iii) 800 square feet for a two Bedroom Unit;

(iv) 1,000 square feet for a three Bedroom Unit; and

(v) 1,200 square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. HTC Applicants must maintain the points associated with the selected amenities throughout the Affordability Period. The LURA will identify the list of amenities. Amenities must be for every Unit at no extra charge to the tenant. Applicants must select at least two (2) points from clause (iii) of this subparagraph.

(C) Tax-Exempt Bond Developments must meet a minimum of nine (9) points. Direct Loan Applications not layered with HTCs must meet a minimum of five (5) points. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. Rehabilitation Developments that also include New Construction will not start with a base score and must meet a minimum of nine (9) points.

(i) Unit Features include:

(I) covered entries; (0.5 point)

(II) nine foot ceilings in living room and all Bedrooms (at minimum); (1 point)

(III) microwave ovens; (0.5 point)

(IV) self-cleaning or continuous cleaning ovens; (0.5 point)

(V) storage room or closet of approximately 9 square feet or greater on the Property site, separate from and in addition to Bedroom, entryway or linen closets (does not need to be in the Unit); (0.5 point)

(VI) covered patios or covered balconies; (0.5 point)

(VII) High Speed Internet service to all Units (can be wired or wireless; must provide required equipment for either); (1 point)

(VIII) built-in (recessed into the wall) shelving unit; (0.5 point)

(IX) breakfast Bar (a space that includes an area for seating, seating itself not required); (0.5 point)

(X) walk-in closet in at least one Bedroom; (0.5 point)

(XI) 48-inch upper kitchen cabinets; (1 point)

(XII) kitchen island; (0.5 points)

(XIII) kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only); (0.5 point)

(XIV) natural stone or quartz countertops in kitchen and bath; (1 point)

(XV) double vanity in at least one bathroom; (0.5 point) and

(XVI) hard floor surfaces in over 50% of unit NRA. (0.5 point)

(ii) Development Construction Features include:

(I) covered parking (may be garages or carports, attached or freestanding) including at least one covered space per Unit; (1.5 points)

(II) thirty year roof; (0.5 point)

(III) greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors (calculation may exclude exterior glass entirely); (2 points)

(IV) electric Vehicle Charging Station; (0.5 points)

(V) an Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class rating of 60 or higher in all Units, as certified by the architect or engineer of record; (3 points) and

(VI) green Building Features. Applicants may select from only one of the categories in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, each must incorporate green building features to qualify. (4 points)

(-a-) Enterprise Green Communities. The Development incorporates, at a minimum, all items necessary to obtain Enterprise Green Communities certification applicable to the construction type as provided in the most recent version found at http://www.greencommunitiesonline.org.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development incorporates, at a minimum, all applicable criteria necessary to obtain a LEED Certification for any rating level (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development incorporates, at a minimum, all applicable criteria necessary to obtain a NGBS Green Certification for any rating level (i.e., Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

(I) Energy-Star or equivalently rated refrigerator with icemaker; (0.5 point)

(II) Energy-Star or equivalently rated washers and dryers for each individual Unit (must be front loading in required accessible Units); (2 points)

(III) recessed LED lighting or LED lighting fixtures in kitchen and living areas; (1 point)

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms; (0.5 point)

(V) EPA WaterSense or equivalent qualified toilets in all Bathrooms; (0.5 point)

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all Bathrooms; (0.5 point)

(VII) 15.2 SEER2 HVAC, an efficient evaporative cooling system in Region 13, or a radiant barrier in the attic for Rehabilitation (excluding Reconstruction) where such systems are not being replaced; (1 point)

(VIII) 16.0 SEER2 HVAC, for New Construction or Rehabilitation; (1.5 points)

(IX) Heating provided by an electric heat pump system or natural gas and air-conditioning provided by an electric heat pump system (1.5 points)

(X) a rainwater harvesting/collection system or locally approved greywater collection system; (0.5 points)

(XI) Wi-Fi enabled, Energy-Star or equivalently rated "smart" thermostats installed in all units. (1 point)

(XII) solar panels installed, with a sufficient number of panels to reach a rated power output of at least 300 watts for each Low-Income Unit. (2 points)

(7) Resident Supportive Services. The resident supportive services include those listed in subparagraphs (A) - (E) of this paragraph. Applicants are not required to select a specific number of services from each section. Tax-Exempt Bond Developments must meet a minimum of eight (8) points. Direct Loan Applications not layered with HTCs must meet a minimum of four points. The LURA will include the points selected, complete list of supportive services, and a requirement to maintain them throughout the Affordability Period. The Owner may change the services offered if the overall points as selected at Application remain the same; however, a 45-day notice must be provided to tenants of the change. Staff may require an Owner to substantiate such service(s). Should the QAP in subsequent years provide different services than those listed in this paragraph, the Owner may request an Amendment under §10.405(a)(2) of this chapter. The services provided should directly benefit the Target Population. Owners must provide residents written notice of the elections made, not charge fees to the residents for any of the services, provide adequate space, and make services accessible to all (e.g., exercise classes enable a person with a disability to participate). Unless otherwise specified, Owners must provide either services on-site or transportation to off-site services. Applicants may not use the same service for more than one scoring item. An entity qualified and reputable in the specified industry with sufficient knowledge must provide the service. In general, on-site leasing or maintenance staff are not a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(A) Transportation Supportive Services include:

(i) shuttle, at least three days a week, to a grocery store and pharmacy (may be inside a major, big-box retailer) or a daily shuttle, during the school year, to and from nearby schools not served by a bus system for children who live at the Development; (3.5 points) and

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point)

(B) Children Supportive Services include:

(i) a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Site meeting the requirements of paragraph (5)(C)(i)(I) of this subsection; (half of the points required under this paragraph)

(ii) 12 hours of weekly, organized, on-site services provided by a dedicated service coordinator or third-party entity to K-12 children, including after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults. (3.5 points) and

(iii) services intended to track and address school truancy in children, as evidenced by a written agreement with the applicable school district, and that include transportation services for De-

velopments not served by the school's bus system, individual case management, and incentives to promote school attendance. (3 points)

(C) Adult Supportive Services include:

(i) Four hours of weekly, organized, in-person, hybrid, or virtual classes to equip adult residents with new skills, accessible to participants from an on-site Common Area, including English as a second language, computer training, financial literacy, homebuyer counseling, health education, certification courses, GED preparation, resume and interview prep, and general presentations about community services and resources. (3.5 points)

(ii) Annual income tax preparation (offered by an income tax prep service) or IRS-certified Volunteer Income Tax Assistance program (offered by a qualified individual) that includes how to claim the Earned Income Tax Credit. (1 point)

(iii) Contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services, including programs that train and hire residents for job opportunities inside the Development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation. (2 points)

(iv) External partnerships for provision of weekly substance abuse meetings at the Site. (1 point)

(v) Reporting rent payments to credit bureaus for any resident who affirmatively elects to participate. (2 points)

(vi) Participating in a nonprofit healthcare job training and placement service that includes case management support and other need-based wraparound services to reduce barriers to employment and support Texas healthcare institution workforce needs. (2 points)

(vii) An eviction prevention program operated by a case manager who may be an employee of the Owner or a third-party social service provider and responsible for no more than 50 cases at a time. On at least a monthly basis, the case manager will obtain contact information and past due balances for households at risk of eviction for nonpayment of rent. The case manager will offer households voluntarily choosing to participate in an eviction holdoff agreement providing a minimum of six months to resolve the past due balance and forgiving any associated late fees regardless of whether they have been paid. During the eviction holdoff period, the case manager will offer to meet with the household at least once every other week. The case manager will identify resources that provide emergency rental assistance and other financial support and assist the household in applying. (5 points)

(D) Health Supportive Services include:

(i) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e., laundry detergent, toiletries, etc.) accessible to residents at least monthly or upon request. Transportation provided to a local food bank meets this requirement if residents are not required to pay for items received. (2 points)

(ii) Annual health fair provided by a health care professional. (1 point)

(iii) Weekly exercise classes (offered at times when most residents would be likely to attend). (2 points)

(iv) Contracted on-site occupational or physical therapy services for Elderly Developments or Persons with Disabilities. (2 points)

(E) Community Supportive Services include:

(i) Partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents, including playing sports, having a cook-out, swimming, card games, etc. (2 points)

(ii) Notary Services during regular business hours. (§2306.6710(b)(3)) (1 point)

(iii) Twice monthly arts, crafts, and other recreational activities, including Book Clubs and creative writing classes. (1 point)

(iv) Twice monthly on-site social events, including potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc. (1 point)

(v) Specific service coordination services offered by a qualified provider for seniors, Persons with Disabilities, or Supportive Housing. (3 points)

(vi) Weekly home chore services (including valet trash removal, assistance with recycling, furniture movement, etc.) and quarterly preventative maintenance for Elderly Developments or for Persons with Disabilities. (2 points)

(vii) Any program described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which

(I) enables children to be cared for in their homes or the homes of relatives;

(II) ends the dependence of needy families on government benefits by promoting job preparation, work and marriage;

(III) prevents and reduces the incidence of unplanned pregnancies; and

(IV) encourages the formation and maintenance of two-parent families. (1 point)

(viii) A part-time resident services coordinator with a dedicated on-site office space or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services. (2 points)

(ix) Either the Owner or a community partner provides an education tuition- or savings-match program or scholarships to residents who may attend college. (2 points)

(8) Development Accessibility Requirements. All Developments must meet all specifications and requirements in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements.

(A) The Development must comply with the accessibility requirements under Federal and state law, and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730).

(B) Regardless of building type, all Units accessed by the ground floor or by elevator must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph and the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt. The Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph to townhome Units of a Rehabilitation Development with no bathroom on the ground floor. Visitability requirements include:

(i) All common use facilities must comply with the Fair Housing Design Act Manual.

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units.

(iii) All Units accessed by the ground floor or by elevator must include the features in subclauses (I) - (V) below:

(I) At least one zero-step, accessible entrance.

(II) At least one Bathroom or half-bath with toilet and sink on the entry level with a layout that complies with one of the specifications set forth in the Fair Housing Act Design Manual.

(III) The Bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar.

(IV) There must be an accessible route from the entrance to the Bathroom or half-bath, and the entrance and bathroom must provide usable width.

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Owner is and will remain in compliance with applicable state and federal laws. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will count as substantial alteration in accordance with Chapter 1, Subchapter B of this title.

(E) For the purposes of determining the appropriate distribution of accessible Units across Unit Types, assuming all Units have similar features, only the number of Bedrooms and Full Bathrooms will define the Unit Type. Accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and Full Bathrooms. For Direct Loan Developments, the definition of Unit Type will define the Unit Type, although a single story Unit may be substituted for a townhome Unit if it contains the same number of Bedrooms and Full Bathrooms/Half Bathrooms (as applicable) and has an equal or greater square footage.

(F) The Department must approve alternative methods of calculating the number of accessible Units required prior to award or allocation.

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

Filed with the Office of the Secretary of State on September 4, 2026.

TRD-202603892
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.201. Procedural Requirements for Application Submission.

A Site may be the subject of only one Application in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw and subsequently file a new Application using the original pre-application fee (as applicable) as long as the Department did not perform substantive evaluation and the re-submitted Application relates to the same Site, consistent with §11.9(e)(3) of this chapter. Otherwise, withdrawal of an Application is permanent.

(1) General Requirements.

(A) An Applicant must submit an Application to receive an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. An Applicant may cure an error in the calculation of applicable fees via an Administrative Deficiency until 5:00 p.m. on the third business day following the date of the deficiency notice (date may not be extended).

(B) Applicants are responsible for being within the Department's doors by the appointed deadline when making physical deliveries. All Applications and all related materials must be delivered electronically pursuant to the *Multifamily Programs Procedures Manual* and legible, properly organized and tabbed, and fully readable.

(C) The Applicant must timely upload matching .PDF and Excel copies of the complete Application to the Department's secure web transfer server. Staff may issue an Administrative Deficiency for the Applicant to identify which document to rely on if variations exist. Each copy must be in a single file and individually bookmarked as further described in the *Multifamily Programs Procedures Manual*. Applicants must upload additional files required for Application submission outside the Uniform Application to the secure web transfer server. Applicants are responsible for confirming the upload was successful and timely by viewing the uploaded files. Staff may confirm the upload but is not obligated to do so.

(D) Applications must include materials addressing all items enumerated in this chapter and other chapters, as applicable. For any required item not submitted, the Applicant must include a statement explaining why.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted as described in either subparagraph (A) or (B) of this paragraph and satisfy the requirements of this chapter and applicable Department rules coinciding with the year the Certificate of Reservation is issued. Applications receiving a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place when the Department receives the Application, unless staff determines otherwise. Applicants must adhere to the requirements in this chapter regardless of the timing associated with notification by the TBRB that an application is next in line to receive a Certificate of Reservation and the corresponding deadline to submit pursuant to 34 TAC §190.3(b)(13). The Department may terminate an Application for not adhering to the requirements in this chapter. Depending on the timing of the online Multifamily Management System release, staff may allow an Applicant to submit an Intent to Apply for 4% Housing Tax Credits form (and the required Application Fee) to meet the requirement to have the Certificate of Reservation issued by

the TBRB in lieu of submitting as described in this chapter for Priority 1 and 2 applications.

(A) Lottery Applications. At the option of the bond issuer, an Applicant may participate in the TBRB lottery for private activity bond volume cap. Applications must meet clauses (i) - (iii) of this subparagraph depending on the Priority designation of the application filed with TBRB. For those that participate in the Lottery but are not successful (a Certificate of Reservation will not be issued in January, but at some other time), the Application may not be submitted until a Certificate of Reservation has been issued (Priority 3 applications) or TBRB has sent an email stating the application is next in line (Priority 0, Priority 1 or Priority 2), but the Certificate of Reservation cannot be issued until the Application is submitted.

(i) Priority 0 applications for supplemental bond allocations: A complete Application is not required if an Applicant is seeking additional private activity bond volume cap pursuant to Tex. Gov't Code §1372.0321(a) upon notice from the TBRB that the Application is next in line to receive a Certificate of Reservation (staff will notify TBRB accordingly). If changes from what the Department originally approved would constitute an amendment under §10.405 of this title, the Applicant must request an Amendment. Staff will not re-issue the Determination Notice associated with supplemental bond allocations.

(ii) Priority 1 or 2 applications:

(I) If the Certificate of Reservation will be issued in January, the Applicant may submit the complete Application (including all required Third Party Reports) and Application Fee described in §11.901 of this chapter within the timeframe allowed under the TBRB notice.

(II) Alternatively, upon notification from TBRB that an Applicant is next in line to receive a Reservation, the Applicant may choose to submit only the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. The Application will not be scheduled for a Board meeting or target date for the issuance of the Determination Notice, as applicable, until such time the Third Party Reports have been submitted on the fifth of the month. The Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the issuance of the Determination Notice, as applicable, approximately 90 days after submission of the Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline will be on the next business day. For Third Party Reports submitted after the fifth of the month, staff has the discretion as to which Board meeting the Application will be presented, or target date for the issuance of the Determination Notice, as applicable. The Application must be submitted using the Uniform Application released by the Department for the upcoming program year.

(iii) Priority 3 applications: The same Application submission requirements under clause (ii) of this subparagraph apply once the Certificate of Reservation has been issued. Specifically, an Applicant may submit the Application including or excluding the Third Party Reports. Staff will schedule the Application for a Board meeting or target date for the issuance of the Determination Notice only after the Application is complete (Application Fee and all Third Party Reports). The timing of when a Priority 3 Application is submitted is determined by the Applicant. If not submitted on the fifth of the month, staff has the discretion as to which Board meeting the Application will be presented, or target date for the administrative issuance of the Determination Notice, as applicable.

(B) Non-Lottery Applications or Applications Not Successful in Lottery.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of Third Party Reports, before the TBRB can issue the Certificate of Reservation. If not submitted with the Application to meet the TBRB submission requirement, Third Party Reports must be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the administrative issuance of the Determination Notice, as applicable, approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline will be on the next business day. If not submitted on the fifth of the month, staff has the discretion as to which Board meeting the Application will be presented, or what will be the target date for the administrative issuance of the Determination Notice, as applicable. Applicants may not submit the Application until staff receives notice from TBRB that the application is next in line to receive a Certificate of Reservation.

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before the Department will consider them accepted and meeting the submission deadline for the applicable Board meeting date or administrative issuance of the Determination Notice, as applicable.

(C) The Department will require at least 90 days to review an Application, or 120 days if layered with other Department funds, regardless of whether the Board will need to approve issuance of the Determination Notice or staff can do so administratively. Applications cannot include a request for over-subscribed funds. Staff is not obligated to ensure the Application meets the original target date for a Board Meeting or administrative issuance of a Determination Notice, as applicable. Application review priority is established in paragraph (5) of this section.

(D) Withdrawal of Certificate of Reservation. The Department will consider as withdrawn any Application under review by the Department that has the Certificate of Reservation withdrawn and for which a new Certificate of Reservation is not expected to be issued within a reasonable amount of time, as determined by staff. Staff will provide the Applicant notice to that effect. Once a new Certificate of Reservation is issued, the Department has the discretion to determine whether the existing Application can still be utilized or if a new Application (including payment of another Application Fee) must be submitted. The Department will not prioritize the processing of the new Application over others under review once a new Certificate of Reservation is issued, or that it maintains the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable.

(E) Applicants must submit Direct Loan Applications in accordance with the requirements in this chapter, §13.5 and the applicable NOFA.

(F) The Staff may provide reasonable relief from non-statutory deadlines and other requirements of this chapter to facilitate testing of an online system. Applicants that participate in such testing will receive no advantage.

(3) Withdrawal of Application. An Applicant may withdraw an Application prior to or after award by submitting to the Department written notice. Return of a Direct Loan award after Board

approval may result in penalties imposed on the Applicant and Affiliates in accordance with §13.11(a) of this title.

(4) Competitive Evaluation Process. The Department will conduct Application reviews based upon the likelihood of being competitive and may not review lower scoring Applications. This may be a high level assessment. The Department will underwrite Applications that received a full program review and remain competitive using §11.302 of this chapter and §13.6 of this title, as applicable. The Department may have an external party perform all or part of the underwriting evaluation. Prior to commencing the evaluation, an Applicant will pay the expense of any external underwriting pursuant to §11.901(5) of this chapter. Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title. The Department or its agents may evaluate a site and neighboring areas through a physical inspection or visit independent of or concurrent with a site visit performed in conjunction with §11.101(a)(3). The Department may provide the Applicant a scoring notice no later than 21 days prior to the final Board approval of awards, which will trigger appeal rights and deadlines under §11.902 of this chapter. (§2306.6715)

(5) Order of review of Applications under various Programs.

(A) De-concentration. The earlier date associated with an Application will establish priority, as follows:

(i) for Tax-Exempt Bond Developments, the date the TBRB issues the Certificate of Reservation, or for a Traditional Carryforward Designation, the date the Department receives the complete HTC Application associated with the Traditional Carryforward Designation;

(ii) for all other Developments, the date the Department receives the Application; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any HTC Application from the current Application Round on the waiting list.

(B) General Review Priority. Staff will establish the order of reviews of Applications under various multifamily programs based on any applicable statutory timeframes in relation to the volume of Applications being processed.

(6) Deficiency Process. The Department may issue a deficiency notice during any review phase. Staff will email the deficiency notice to the Applicant and one other contact party if identified in the Application. The Applicant is responsible for ensuring e-mails are not electronically blocked or redirected. The period to respond commences on the first business day following the deficiency notice date. The Department may send deficiency notices to an Applicant prior to or after the end of the Application Acceptance Period and in response to post-award submission reviews. Responses must be one or more PDF files uploaded to the Application's ServU http file. The Department will not accept emailed responses. Staff may in good faith provide an Applicant confirmation of receiving an Administrative Deficiency response or that such response is satisfactory, which does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Staff may determine the issues identified are Material Deficiencies not subject to resolution (beyond the scope of an Administrative Deficiency). The Department will make final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information.

(A) A person who receives a deficiency is responsible for addressing the matter so staff is able to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party of adverse consequences if the materials do not fully resolve the matter (point deductions, suspension, or termination). A Deficiency response may not contain documentation that did not exist prior to submission of the pre-application or Full Application, as applicable, except as specifically allowed by 10 TAC §11.1(d)(2). Administrative Deficiency deadlines may be extended up to five days if the:

(i) documentation needed is from a Third Party,

(ii) certifications in the Application lack Third Party signatures, or

(iii) extension request is for a reasonable accommodation.

(B) Deficiencies for Competitive HTC Applications. An Application will lose five (5) points from the selection criteria score for each day a deficiency remains unresolved after 5:00 p.m. on the fifth business day following the date of the deficiency notice (does not impact the pre-application score). The Department will terminate an Application if deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, subject to the Applicant's right to appeal. The Department may update its application log or issue a Scoring Notice to reflect point deductions. Other than in response to a Department request resulting from an Administrative Deficiency, an Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award (including not adding any set-asides, increasing the requested HTC amount, revising the Unit mix, or adjusting the self-score). (§2306.6708(b); §2306.6708) The Deficiency Process may not increase a scoring item's points or change any aspect of the proposed Development, financing structure, or other element unless specifically allowed by rule.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless the Applicant has requested an extension prior to the deadline, deficiencies must be resolved to the Department's satisfaction by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Otherwise the Department will suspend the Application from further processing and notify the Applicant. The Department will terminate an Application if deficiencies are not resolved by 5:00 p.m. on the fifth business day following the date of the suspension notice. If an Applicant appeals a staff termination, the Board decision is final and an Applicant may not re-apply under the same Certificate of Reservation due to the limited timeframe allowed.

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the Department's satisfaction by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Otherwise the Department will suspend the Application from further processing and notify the Applicant. The Department will terminate an Application if deficiencies are not resolved by 5:00 p.m. on the fifth business day following the date of the deficiency notice. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved during the suspension period, the date by which the final deficient item is submitted will be the new Application Acceptance Date pursuant to §13.5(c) of this title. After Termination an Applicant must submit a completely new Application (along with a new Application Fee, as applicable) to move forward with the Development. All deficiencies in the original deficiency notice must be incorporated into the re-submitted Application, which will have a new Application Acceptance Date.

(7) Limited Reviews. An Applicant may request a limited review of specific and limited issues in subparagraphs (A) or (B) of this paragraph (not related to the score). Staff will request any correction or clarification through the Deficiency process in paragraph (6) of this section if appropriate.

(A) Clarification of issues that staff would have difficulty identifying due to the omission of information available only through Applicant disclosure, such as a prior removal from an HTC transaction or participation in a Development not identified in the previous participation portion of the Application.

(B) Technical correction of non-material information that would cause an Application to be competitive and subject to a staff review. For example, failure to mark eligibility for the Nonprofit Set-Aside when all necessary documentation was included in the Application.

(8) Challenges to Opposition. An Applicant may challenge a written statement from a Neighborhood Organization expressing opposition if it is contrary to findings or determinations (including zoning) of a municipality, county, school district, or other local Governmental Entity with relevant jurisdiction or oversight. The challenger must declare the basis and submit by the Challenges to Neighborhood Organization Opposition Delivery Date in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will have seven calendar days to provide information. Staff will provide all such materials and its analysis to a fact finder chosen by the Department for a determination of whether the statements are contrary to a local Governmental Entity's findings or determinations (not accuracy of the statements). The fact finder's determination will be final and may not be waived or appealed.

§11.202. Ineligible Applicants and Applications.

Anyone may identify situations in which an Application or Applicant may be ineligible for award. The items in this section are not an exhaustive list of ineligibility criteria. Staff may request documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Site, or Development. The matters in paragraph (1) of this section may also serve as a basis for debarment or assessment of administrative penalties. Nothing herein limits the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor.

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those in the U.S. government's System for Award Management. (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or pre-application submission (if applicable).

(C) At the time of Application is subject to:

(i) an order in connection with an enforcement or disciplinary action under state or federal securities law or by FINRA;

(ii) a federal tax lien (other than a contested lien for which provision has been made); or

(iii) penalties, suspended funding, or adverse action taken by a Government Entity based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities.

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured, has been given notice and a reasonable opportunity to cure yet failed to do so within the specified time.

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency.

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title.

(G) Is delinquent in any loan, fee, or escrow payments to the Department or is otherwise in default with any provisions of Department loans, and for which the Department has not approved a repayment plan.

(H) Has failed to cure any past due fees owed to the Department within the time frame provided and at least 10 days prior to the Board meeting at which the decision for an award is to be made.

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code §2306.6733 or Chapter 572, from participating in the Application in the manner and capacity they are participating.

(J) Had previous Contracts or Commitments partially or fully Deobligated (without prior Department approval) during the 12 months prior to Application submission, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter.

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment or Determination Notice, or Direct Loan Contract.

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid.

(M) Fails to disclose any Principal, entity, or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person(s) and development involved, each other development, contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. Staff may refer an Application to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application using the factors described in clauses (i) - (v) of this subparagraph as considerations:

(i) the amount of resources in and benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination;

(iii) the role of the person in any problems with the success of the development;

(iv) the person's compliance history, including on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their role as described in the Application.

(N) Fails to disclose any voluntary compliance agreement or similar agreement with any governmental agency resulting from noncompliance of any affordable housing Development.

(O) Controls an existing HTC Development that has been approved by staff or the Board for return and reallocation under 10 TAC §11.6 two or more times and has not yet commenced construction. For Applications that are only requesting Competitive HTCs, an Applicant ineligible under this subparagraph may be eligible if the disqualifying Development has commenced construction as of the May meeting of the Board or May 31st, whichever is sooner. Any such Applicant assumes the risk of doing so. Staff will not recommend to the Board any waiver if the disqualifying Development does not commence construction in time.

(P) Would violate Tex. Prop. Code §5.253.

(2) Applications. An Application will be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph. Failure to provide disclosure may be cause for termination.

(A) A violation of Tex. Gov't Code §2306.1113, exists relating to Ex Parte Communication, which occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact, such as both attending an event) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code §2306.1113(b). The prohibition remains in effect so long as the Application is eligible for award.

(B) The Application is submitted after the Application submission deadline (time or date), is missing multiple parts, or has a Material Deficiency.

(C) For any Development utilizing HTCs or Tax-Exempt Bonds:

(i) the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code §2306.6703(a)(1) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments, any time during the two-year period preceding the date the Application is submitted to the Department);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733.

(iii) The Applicant proposes to replace in less than 15 years any private activity bond financing described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

§11.203. Public Notifications. (§2306.6705(9)).

An Application must include a certification that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section not older than three months from the first day of the Application Acceptance Period for Competitive HTC applications. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications generally must not be older than three months prior to the date the complete Application is submitted. No additional notifications are required to those made to satisfy pre-application submission requirements. If the jurisdiction of an official described in paragraph (2) of this section changes between the submission of a pre-application and Application such that the Development is in a new jurisdiction, the Applicant must notify the new entity no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications. The Applicant must identify, list, and notify all Neighborhood Organizations described in §11.8(b)(2)(A) of this chapter.

(2) Notification Recipients. Applications must comply with the notification requirements in §11.8(b)(2)(B) of this chapter no later than the date the Application is submitted.

(3) Contents of Notification. Notifications must comply with the content requirements in §11.8(b)(2)(C) of this chapter.

§11.204. Required Documentation for Application Submission.

This section identifies the threshold documentation required at the time of Application submission. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission, as applicable to the program.

(1) Certification, Acknowledgement, and Consent of Owner. Applications must include an executed certification described in subparagraphs (A) - (I) of this paragraph. The Person executing the certification is responsible for the compliance of all individuals referenced therein and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if none are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development and will be enforceable by the Department and residents in accordance with the LURA, including administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title). The violation of any such condition is sufficient cause for the cancellation and rescission by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they will be enforceable even if not reflected in the LURA.

(D) The Owner has read and understands the fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code §2306.6734.

(F) The Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations and

will specifically market to waitlist(s) of any public housing authority (PHA) whose jurisdiction is within five miles. The Owner will identify how they will specifically market to veterans and the PHA waiting list(s) and report to the Department on the results of the marketing efforts in the annual report. The Department must approve exceptions to this requirement.

(G) The Owner will comply with all notices required by the Department.

(H) The Owner will comply with an existing LURA with the Department.

(I) The Owner acknowledges that all Applications are subject to a review for compliance with applicable accessibility standards, including Rehabilitation.

(2) Applicant Eligibility Certification. Any individual required to be listed on the organizational chart and meeting the definition of Control must execute a certification of the information in this subchapter as well as Subchapter B of this chapter identifying the eligibility requirements associated with multifamily funding, including the criteria identified under §11.202 of this chapter.

(3) Engineer/Architect Certification Form. The Development engineer or accredited architect must certify all of the accessibility requirements applicable to the Site, including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. The following actions must take place with respect to filing an Application and any Department consideration for a Tax-Exempt Bond Development. (§2306.67071)

(A) An Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter prior to submitting to the Department. (§2306.6705(9))

(B) The Governing Body of:

(i) municipality must hold a hearing if the Site is located within a municipality,

(ii) county must hold a hearing if not, or

(iii) For Sites located in an ETJ both the municipality and the county must hold a hearing (these may be held jointly). The purpose of the hearing(s) is for the public to have an opportunity to provide input concerning the Application or Development. The public or local government officials may ask the Applicant to substantively address their concerns.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body specifically identifying the Development by legal description, address, name, Application number or other verifiable method. For a Site:

(i) within a municipality, from its Governing Body;

(ii) within the ETJ of a municipality, from the Governing Body of both:

(I) that municipality; and

(II) the county;

(iii) within a county and not within a municipality or the ETJ of a municipality, from the county.

(D) For purposes of the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter. Resolutions may not be older than four years. The Multifamily Programs Procedures Manual contains an acceptable, but not required, form of resolution. Staff will invalidate resolutions without all appropriate references and certifications. The representations made to obtain the resolution(s) must remain accurate. Should there be material changes to the Development that could have impacted adoption of the resolution(s), the Applicant is responsible for obtaining new resolution(s) to satisfy this requirement. The resolution(s) must certify that:

(i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code §2306.67071(a);

(ii) the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code §2306.67071(b); and

(iv) after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Site is in an Urban or Rural Area. The Department will post a list of Places meeting the requirements of Tex. Gov't Code §2306.004(28-a)(A) and (B) for designation as a Rural Area and Urban Areas in the Site Demographics Characteristics Report. Sites located in the ETJ of a municipality and not in a Place have the designation of the ETJ's municipality. Sites not in the boundaries of a Place or the ETJ of a municipality have the applicable designation of the closest Place.

(B) A duly authorized official of a political subdivision or census designated place located in a metropolitan statistical area can submit a letter to the Department requesting a Rural designation, addressing the factors outlined in clauses (i) - (vi) of this subparagraph, no later than December 15 of the previous year. (§2306.6740) Staff will grant the request if able to confirm its findings. The Rural designation will remain in effect until the population as described in clause (i) of this subparagraph exceeds 25,000. If staff is unable to confirm, the official will have an opportunity to supplement the case. Staff will recommend denial to the Board if still unable to confirm. The factors include the political subdivision or census designated place:

(i) population does not exceed 25,000;

(ii) characteristics and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) percentage of the total border is contiguous with urban areas (less than 50% contiguity is presumptively rural);

(iv) contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) lacks major amenities commonly associated with urban or suburban areas; and

(vi) boundaries contain, or are surrounded by, undeveloped or agricultural land more than one-third of the total surface area, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Financing Requirements.

(A) Non-Department Debt Financing. Applications must include interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any resources requested from the Department. If a Development is a part of a larger

development on the same site, the Department may request information related to whether financial viability depends in whole or part on the other portions. The rent schedule must identify any local, state or federal financing that restricts household incomes lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title. The local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive HTCs. Financing amounts must be consistent throughout the Application. Acceptable documentation includes those in clauses (i) - (iv) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Owner as grantor.

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company must be or include:

(I) current, non-expired, and have been signed or otherwise acknowledged by the lender;

(II) addressed to the Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or a term of not less than 30 years for non-amortizing loans;

(IV) either a committed and locked interest rate or lender estimated underwritten interest rate;

(V) the "up to" principal amount of the loan; and

(VI) any other material terms and conditions (may be conditioned on completing specified due diligence and HTC award).

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming the outstanding loan balance on a specified date and the Applicant has submitted the Preliminary Assessment Tool. The loan amount reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and used to determine the acquisition cost must be the Applicant's estimate of the projected outstanding loan balance at the time of closing, as calculated on the USDA Principal Balance Amortization exhibit.

(iv) For Direct Loan Applications or Tax-Exempt Bond Developments with TDHCA as the issuer that utilize FHA financing, the Application must include the applicable pages from the HUD Application for Multifamily Housing Project. A submitted Application must state if the HUD application has not been submitted and an estimated date for doing so. Staff's underwriting will not be final and presented to the Board without evaluating the HUD Application.

(B) Gap Financing. Applications must identify and describe any anticipated federal, state, local or private gap financing and provide evidence that an application has been made, including a letter from the funding entity confirming application receipt or a term sheet from the lending agency describing the financing amount and terms. Other Department funding requested with HTC Applications must be in a concurrent funding period. All soft or below market rate financing necessary for financial feasibility must be committed by 10% test for Competitive Applications; a 10% test extension will not be granted if these sources are not committed or the gap filled by other committed sources.

(C) Owner Contributions. If the Application includes a capital contribution or debt by any partner or investor not providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, the Application must include a letter from the following entities. All capital contributions other than syndication equity will be Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter or for scoring, unless the Development is a Supportive Housing Development, there are no HTCs, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support affordable housing development.

(i) a Third Party CPA verifying the capacity of the contributor to provide the capital from funds not otherwise committed or pledged,

(ii) the contributor's bank(s) or depository(ies) confirming sufficient funds are readily available, and

(iii) the contributor certifying the funds are and will remain readily available until completing the required investment.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator including, at a minimum:

(i) an estimate of the amount of equity dollars expected to be raised;

(ii) the amount of HTCs requested for allocation;

(iii) pay-in schedules; and

(iv) syndicator consulting fees and other syndication costs.

(E) Financing Narrative. (§2306.6705(1)) Applications must include a narrative describing any special, complex, or unique aspects of the financing plan, such as any operating subsidies, project-based assistance, replacement reserves, or interest rate swaps, the status (dates and deadlines) for applications, approvals and closings, etc. associated with soft or other government sources, including the funding source; and any refinancing or loan assumptions for USDA loans, etc. Applicants requesting Direct Loan funds and 9% LIHTC must submit a letter from the anticipated Match provider indicating its willingness and ability to make a financial commitment if the Development receives a Direct Loan award.

(7) Operating and Development Cost Documentation. Applicants must include the content described in subparagraphs (A) - (G) of this paragraph using forms and exhibits provided by the Department. Any item labeled "other" must include a description.

(A) Fifteen-year Pro forma. A 15-year pro forma estimate of operating expenses (or longer, if required by the NOFA).

(B) Utility Allowances. Exhibit indicating which utilities are included in the estimate (complying with §10.614 of this title), including effective dates, and documentation from the utility allowance estimate source used in completing the Rent Schedule. If applicable, documentation indicating the Department has granted the requested method.

(C) Operating Expenses. Exhibit indicating the anticipated operating expenses. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. Exhibit meeting the requirements of clauses (i) - (vi) subparagraph. The LURA will reflect income and rent restrictions for the duration of the Affordability Period and for Tax-Exempt Bond Developments, in accordance with the Applicant's election under Tex. Gov't Code §1372.0321.

(i) indicate the type of Unit restriction based on the rent and income restrictions;

(ii) reflect the rent and utility limits available at the time of Application submission;

(iii) reflect gross rents consistent with project-based rental assistance documentation (if applicable);

(iv) have a Unit mix and net rentable square footages consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds, such restricted Units will "float" (unless specifically disallowed under program rules or the NOFA) and the following percentages of them must be available to households with the following income levels:

(I) if HOME, TCAP RF, and/or NSP PI are anticipated source(s), at least 90% at or below 60% AMI;

(II) if HOME or TCAP RF are anticipated source(s), at least 20% at or below 50% AMI;

(III) if NHTF is an anticipated source, 100% at the greater of 30% AMI or the poverty line;

(IV) if NSP PI is an anticipated source, at least 25% at or below 50% AMI;

(V) if HOME-ARP is an anticipated source, at least 20% at 60% AMI and 100% at 80% AMI during the State Affordability Period; and

(vi) if proposing to elect average income, Units restricted by any source other than HTCs must be specifically identified and included in the average calculation.

(E) Development Costs. Exhibit including the contact information for the person providing the cost estimate and meeting the requirements of clauses (i) and (ii) of this subparagraph. Applications with a combination of new construction and rehabilitation activities must include a separate development cost schedule exhibit for the rehabilitation.

(i) A detailed cost breakdown of any projected Site Work costs (excluding site amenities) prepared by a Third Party engineer.

(ii) If costs for Off-Site Construction are in the budget as a line item, embedded in the site acquisition contract, or referenced in the utility provider letters, then a Third Party engineer must provide an Off-Site Cost Breakdown and describe the necessity of the off-site improvements, the relevant local jurisdiction requirements, and the source of their cost estimate. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) Any related contract or other agreement securing rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment identifying the source and annual amount, the number of units covered, and its term and expiration date.

(G) Occupied Developments. Applications must include the items in clauses (i) - (vi) of this subparagraph if, at any time after the Application Acceptance Period begins, any structure on the Site is occupied. If the Application includes a request for Direct Loan funds, Applicants must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements (including Section 104(d) of the Housing and Community Development Act and HUD Handbook 1378). Failure to do so will make the proposed Development ineligible for Direct Loan funds and may result in a penalty under §13.11(b) of this title. If one or more items in this subparagraph do(es) not apply based on the type of occupied structure, the Applicant must provide an explanation of why.

(i) The items identified in subclause (I) of this clause. If (I) cannot be submitted, explain the reason and submit (II). Proceed in this manner through subclause (IV).

(I) Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period; or

(II) The two most recent consecutive annual operating statement summaries; or

(III) The most recent consecutive six months of operating statements and the most recent available annual operating summary; or

(IV) All monthly or annual operating summaries available.

(ii) A rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates then offered, Unit mix, and any vacant units.

(iii) A written explanation of the process used to notify and consult with the tenants in preparing the Application. (§2306.6705(6))

(iv) A relocation plan outlining relocation requirements and a budget with an identified funding source. (§2306.6705(6))

(v) Any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with applicable relocation laws or regulations.

(vi) If applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies. (§2306.6705(6))

(8) Architectural Drawings. Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with the rest of the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) A site plan including the items in clauses (i) - (xii) of this subparagraph:

(i) the size of the site on its face;

(ii) a Unit and building type table matrix;

(iii) a table matrix specifying the square footage of Common Area space on a building basis;

(iv) all residential and common buildings in place on the Site;

(v) the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) the flood plain boundary lines or states there is no floodplain;

(vii) placement of detention/retention pond(s) or states there are no detention ponds;

(viii) description of how flood mitigation or other required mitigation will be accomplished (if applicable);

(ix) the location and number of parking spaces, garages, and carports;

(x) the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) information regarding local parking requirements; and

(xii) compliant accessible routes or, if a route is not accessible, a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans for each building type, including the locations of the accessible Units and square footage calculations for balconies, breezeways, corridors and any other space not included in net rentable area.

(C) Unit floor plans for each Unit Type with square footages, including accessible Units. Adaptive Reuse Applications will include each distinct floor plan (one-Bedroom or two-Bedroom) and all that vary in Net Rentable Area by 10% from the typical floor plan.

(D) Elevations for each side of each building type (or a statement that all other sides are of similar composition as the front) and a percentage estimate of the exterior composition and proposed roof pitch. Rehabilitation Applications submit post-renovation drawings if proposing to alter Unit configurations, or photographs if not.

(9) Site Control.

(A) The Application must include evidence the Owner or an Affiliate (with the ability to assign) has Site Control and identify all sellers of the proposed Property for the 36-month period prior to the first day of the Application Acceptance Period and their relationship to members of the Development Team (if any). An Owner must promptly provide documentation of its ability to compel title of any Affiliated property acquisition(s) to the Department upon request. The Department will consider whether any encumbrance is reasonable within the Owner's legal and financial ability to address without delaying development. To meet the requirements of subparagraph (B) of this paragraph, Tax-Exempt Bond Developments not requesting a Direct Loan or the Department as the bond issuer must certify that the Site Control submitted with the TBRB application for the Certificate of Reservation to be issued is still valid. Tax-Exempt Bond Developments involving Acquisition and Rehabilitation or identity of interest land acquisitions must submit Site Control documents to verify the acquisition cost as required in §11.302 of this chapter.

(B) Applicants must provide one of the items in clauses (i) - (iii) of this subparagraph. In the case of land donations, Applicants must demonstrate the donating entity has Site Control as through one of the items below or other documentation acceptable to the Department.

(i) A recorded warranty deed vesting indefeasible title in the Owner or an Affiliate if transferrable, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining).

(ii) A contract or option for lease with a minimum term of 45 years that includes a price, address or legal description, proof of consideration in the form specified in the contract, and expiration date.

(iii) A contract for sale or an option to purchase that includes a price, address or legal description, proof of consideration in the form specified in the contract, and expiration date.

(C) If the acquisition is an identity of interest transaction, as described in §11.302 of this chapter, then the Application must include additional documentation required therein.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, and the fee title owner of the property agreeing that the LURA may extend to the access.

(E) If control of the entire proposed Site requires vacating a plat, right of way, or similar dedication, the Application must include evidence that the process has started. Owner must provide evidence of control of the entire Site by the time of Commitment or Contract (as applicable).

(10) Zoning. (§2306.6705(5)) Applications must include one of subparagraphs (A) - (D) of this paragraph. If a Site is annexed while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters must be from a local government official with appropriate jurisdiction and no more than six months old at Application submission, or updated annually for an area where there is no zoning.

(A) No Zoning Ordinance in Effect. A letter stating the Development is located within the boundaries of a political subdivision that has no zoning. This requirement does not apply to a Site located entirely in the unincorporated area of a county, and not in an ETJ.

(B) Zoning Ordinance in Effect. A letter stating the Development is permitted under the provisions of the applicable zoning ordinance.

(C) Requesting a Zoning Change, or a Specific or Special Use Permit. A letter stating the Applicant or Affiliate has formally applied for a required zoning change and the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event of not receiving the appropriate zoning. Owners must submit documentation of final approval of appropriate zoning, including any necessary specific or special use permits, with the Commitment or Determination Notice.

(D) Rehabilitation Developments. Applications must include documentation of current zoning (if applicable). If the Property is currently conforming but with an overlay that would make it non-conforming as presently zoned, the Application must include a letter addressing items in clauses (i) - (v) of this subparagraph.

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) that it will allow the non-conformance;

(iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

(11) Title Commitment/Policy. Applications must include a title commitment or title policy that includes a legal description consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then the Application must include a letter from the title company indicating that nothing further has transpired during the

six-month period on the commitment or policy. Tax-Exempt Bond Developments not requesting a Direct Loan or the Department as the bond issuer are exempt from this requirement.

(A) The title commitment must list the name of the Owner as the proposed insured and list the seller or lessor as the current owner of the Site.

(B) The title policy must show that the ownership (or leasehold) of the Site is vested in the name of the Owner.

(12) Ownership Structure and Previous Participation.

(A) The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and Chapters 12 and 13, as applicable.

(B) Organizational Charts. Applicants must submit charts for the proposed Owner, Developer, and Guarantor (if applicable):

(i) illustrating the organizational structures,

(ii) identifying all Principals, and

(iii) providing the names and ownership percentages of all Persons having an ownership interest, whether directly or through one or more subsidiaries, regardless of having Control. The charts must include individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. Notwithstanding the foregoing, in the case of HTC Applications only, if the entity is owned by a fund regulated by the U.S. Securities and Exchange Commission, no Natural Person is required to be listed or sign any applications. The List of Organizations form must include all Persons identified on the organizational charts and identify which Person(s) exercise Control of the Development.

(C) Previous Participation. Each of the following must submit completed previous participation information. The information must include all Developments that are, or were, previously under ownership or Control of the Applicant or each Principal, including any Person providing the required experience and disclose all participation in any Department funded or monitored activity (including non-housing), and HTC developments or other programs administered by other states using state or federal funds. The individuals must authorize the parties overseeing such programs to release compliance histories to the Department.

(i) each entity shown on the organizational charts described in subparagraph (B) of this paragraph,

(ii) each individual who exercises Control over the Development,

(iii) individual Principals of entities identified on the organizational charts and on the List of Organizations form, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title.

(D) Direct Loan and 811 PRA. If the Applicant is applying for Direct Loan funds or claiming points for participation in 811 PRA, then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180 and 2424 in the organizational charts and the Previous Participation information. In addition, if requesting 811 PRA and claiming points for an Existing Development(s), include the organizational chart for each.

(13) Nonprofit Ownership. Applications involving a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable, and a resolution approved by the majority of the board of directors indicating their awareness of the organization's participation in each specific Application and naming all board members and employees who may act on its behalf (if the bond issuer is the sole member of the General Partner, a copy of the executed inducement resolution meets this requirement).

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive HTCs involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements must submit the documents described in clauses (i) to (v) below and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be under the Nonprofit Set-Aside and a certification of not expecting a benefit in HTC allocation as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter stating the nonprofit organization is tax-exempt under §501(c)(3) or (4) of the Code.

(ii) The Nonprofit Participation exhibit in the Application, including a list of the names and contact information for all board members, directors, and officers.

(iii) A Third Party legal opinion stating that:

(I) the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) the nonprofit organization is eligible, as further described, for an HTC Allocation from the Nonprofit Set-Aside pursuant to Code §42(h)(5) and the basis for that opinion;

(III) one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board (if the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member);

(V) the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(VI) the nonprofit organization is able to do business as a nonprofit in Texas.

(iv) A copy of the nonprofit organization's most recent financial statement as prepared by a certified public accountant.

(v) Evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in Texas, if the Development is in a Rural Area; or

(II) within ninety (90) miles of the Development if not.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit:

(i) an IRS determination letter stating the nonprofit organization is tax-exempt under §501(c)(3) or (4) of the Code; and

(ii) the Nonprofit Participation exhibit as provided in the Application.

(C) If the Application involves a nonprofit not exempt from taxation under §501(c)(3) or (4) of the Code, then it must disclose the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have an IRS determination letter will submit documentation evidencing creation under their respective chapters of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(14) Feasibility Report. Applications must include a Feasibility Report meeting the criteria provided in subparagraphs (A) to (F) of this paragraph; Rehabilitation Applications only requesting 9% HTCs and Tax-Exempt Bond Developments for which the Department is not the bond issuer will meet only subparagraph (D).

(A) Reports must address any atypical items materially impacting costs or the successful and timely execution and include the following statement: "Any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary.

(C) A general statement regarding the level of site development due diligence done (including discussions with local governments), providing website links to ordinances, and:

(i) a summary of zoning requirements;

(ii) subdivision requirements;

(iii) property identification number(s) and millage rates for all taxing jurisdictions;

(iv) development ordinances;

(v) fire department requirements;

(vi) site ingress and egress requirements; and

(vii) building codes and local design requirements.

(D) Survey as defined the Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys (other than for Rehabilitation) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways, topography (using either existing seller topographic survey or database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, off-site improvements, and any other typical or locally required items.

(F) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§11.205. Required Third Party Reports.

The Department may terminate an Application for failure to submit Third Party Reports as an electronic copy in a single file containing all information (exhibits clearly labeled) with the report type, Development name and location prepared in accordance with Subchapter D of this chapter by the applicable deadline. The Department may request additional information or revisions from the report provider. In the absence of a response, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. Applications must include an ESA prepared in accordance with the requirements of §11.305 of this chapter.

(A) All ESAs must meet one of the following:

(i) dated not more than 12 months prior to either the Application Acceptance Period for Competitive HTC Applications or Application submission for others; or

(ii) a letter or updated report dated not more than six months prior to the dates above from the initial assessment author confirming the site has been re-inspected and either reaffirming its conclusions or identifying changes.

(B) Existing Developments funded by USDA are exempt.

(C) If the report recommends an additional assessment, then the Applicant must submit a statement with the Application indicating it will perform such additional assessments and recommendations prior to closing. If the assessments require further mitigating recommendations, then the Owner must submit evidence with the cost certification indicating they have been carried out.

(2) Market Analysis. Applications must include a Market Analysis prepared in accordance with the requirements of §11.303 of this chapter dated not more than six months prior to the date of the first day of the Application Acceptance Period for Competitive HTC Applications or Application submission for others. If the report is older, but not more than 12 months prior to the forgoing dates, the Qualified Market Analyst author may provide a statement dated not more than six months prior to the foregoing dates reaffirming the findings.

(A) For Rehabilitation or Reconstruction projects meeting the following criteria Market Analysis means a location map and a written statement by a disinterested Qualified Market Analyst certifying:

(i) all Units contain existing project based rental assistance that will continue for at least the Compliance Period, an existing Department LURA, or the subject rents are at or below 50% AMGI rents;

(ii) at least 80% of Units are occupied at time of Application; and

(iii) existing tenants have a leasing preference or right to return under a relocation plan.

(B) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with §11.303 of this chapter.

(C) For Applications with USDA financing proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal satisfies the requirement for a Market Analysis (the Department may request additional information).

(3) Scope and Cost Review (SCR). Applications for Rehabilitation (excluding Reconstruction) and Adaptive Reuse must include an SCR prepared in accordance with the requirements of §11.306 of this chapter dated not more than six months prior to the Application Acceptance Period for Competitive HTC Applications or Application submission for others. If the report is older, but not more than 12 months prior to the forgoing dates, the author may provide a statement dated not more than six months prior to the foregoing dates reaffirming the findings. A capital needs assessment required by USDA qualifies as the SCR and may be more than six months old if USDA confirms in writing the assessment is still acceptable and it meets the requirements of §11.306 of this chapter. Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system including a comparison between the local building code and the International Existing Building Code, and the Department's SCR Supplement. An SCR is not required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments not including a request for Direct Loan or where the Department is not the bond issuer (must include a Scope of Work Narrative as described in §11.306(j) of this chapter).

(4) Appraisal. An Appraisal prepared in accordance with the requirements of §11.304 of this chapter is required for Applications which an appraisal is required under §11.302(e)(1) of this chapter (relating to Acquisition Rules). The Appraisal must not be dated more than six months prior to Application submission, the Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. An appraisal required by USDA may be more than six months old if USDA confirms in writing that it is still acceptable. Notwithstanding the foregoing, an Appraisal is not required if no acquisition costs are entered in the development cost schedule.

§11.206. Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv)).

The Board will base decisions regarding awards or the issuance of Determination Notices, if applicable, on the staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board will document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department may reduce the amount of funds requested in an Application, condition the HTC or Direct Loan recommendation, or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207. Waiver of Rules.

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or after an award. The Department will not accept waiver requests on Competitive HTC Applications between submission of the Application and award. Any request for waiver must be specific to an actual proposed Development, be submitted in the format required in the Multifamily Programs Procedures Manual, include plans for mitigation or alternative solutions, and meet the requirements of paragraphs (1) and (2) of this section. Any granted waiver applies solely to the Application and does not constitute a general modification or waiver of the rule involved. Staff may initiate a waiver request to remedy an error in the QAP or other Multifamily rules, provide necessary relief in response to a natural disaster, or address facets of an Application or Development that have not been contemplated.

(1) A request made at or prior to pre-application or Application must establish that the need for the waiver is not within the Applicant's control or is due to an overwhelming need. Staff recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities. The Department will not consider waiver requests for items elected to meet scoring criteria or where the Applicant chose a menu of options unless the Applicant demonstrates that all potential options have been exhausted.

(2) The waiver request must establish how the waiver better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701 than not.

(3) The Board may not grant a waiver to provide, directly or implicitly. any Forward Commitments unless it determines extenuating and unforeseen circumstances. The Board may not waive any requirement contained in statute. The Board may grant a waiver in response to a natural, federally declared disaster that occurs after the adoption of the QAP to the extent authorized by a governor-declared disaster proclamation suspending statutory or regulatory requirements.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.301. General Provisions.

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards. (§2306.081(c), §2306.185, and §2306.6710(d)). The interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions.

(1) The Board is authorized to adopt underwriting standards as set forth in this section. (§2306.148 and §2306.185(b)) The Underwriting Report (Report) in no way guarantees or purports to warrant the Development's actual performance, feasibility, or viability.

(2) The total amount of Department-allocated resources combined with any additional grants or below commercial-rate financing specifically provided for affordable housing from other units of government may not exceed the total cost of all non-market Units, calculated on a per-unit basis. If the Department determines a Development is over sourced, the Applicant must reduce the soft funds provided by other units of government.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant, including additional documentation submitted after the initial award relevant to any subsequent reevaluation. The Report contents will be based on information provided in accordance with and within the timeframes set forth in this chapter, Chapters 11, 12, or 13, or in a NOFA, as applicable.

(c) Recommendations in the Report. The award amount in a Report is the lesser of the methods in paragraphs (1) - (3) of this subsection:

(1) Program Limit Method. For HTC, this method is based on calculation of Eligible Basis after applying applicable cost verification measures and program limits. For other programs, this method is the program or NOFA funding limit.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap between Total Housing Development Cost and total non-Department resources. In making this determination, the Underwriter:

(A) Resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing Department resources.

(B) Divides the gap by the syndication rate to determine the HTC amount.

(C) May assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or adjust any Department financing, such that the cumulative DCR conforms to the standards described in this section.

(D) At cost certification, consider timing adjusters as a reduction to equity proceeds if consistent with the partnership agreement originally admitting the equity partner and relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the adjuster amount.

(3) The Amount Requested. The amount requested in the original Application documentation.

(d) Operating Feasibility. The Underwriter tests a Development's operating feasibility by analyzing its NOI to determine ability to pay debt service and other financial obligations throughout the Affordability Period. The Department will use the Underwriter's estimates unless the Applicant's EGI, Total Operating Expenses, and first year NOI are within 5% of the Underwriter's.

(1) Income. The Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls, Achievable Affordable Rents, and Market Rents and other market conditions, and miscellaneous income, vacancy and collection loss limits based on subparagraphs (B) and (C) of this paragraph (respectively) unless the Underwriter verifies otherwise.

(A) Rental Income. The Underwriter will determine if the Applicant's proposed rent schedule is consistent with representations made in the Application and independently calculate a Pro Forma Rent for comparison to the Application. The Underwriter will not consider projected income from tenant-based rental assistance.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter. The Underwriter may use independently determined Market Rents based on information gained from direct contact with comparable properties even if not used by the Market Analyst and other market data sources. If the Development contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 80% AMI.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents (GPR) for the year that is most current when the underwriting begins. The same GPR will apply to all Applications when underwriting for a simultaneously funded competitive round. If the Department adjusts GPR between the close of the Application Acceptance Period and Report publication, the Underwriter may adjust the EGI to account for an increase or decrease.

(iii) Achievable Affordable Rents. The Underwriter will assume a 10% increase overthe Market Analyst's conclusion of Achievable Affordable Rents if less than GPR and reasonably supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter.

(iv) Contract Rents. The Underwriter will determine the Contract Rents currently applicable and likelihood of continued assistance, taking into consideration the Applicant's intent to request an increase. The Underwriter may use the Applicant's proposed rents as the Pro Forma Rent, with the Report recommendations conditioned on receipt of final approval of the increase. Tenant-based vouchers or rental assistance do not count as Income.

(v) Utility Allowances. The Utility Allowances must comply with all applicable federal guidance and §10.614 of this title, including being calculated for individually metered tenant paid utilities.

(vi) Net Program Rents. Gross Program Rent less Utility Allowance.

(vii) The Underwriter will review actual rents for existing Developments as supported by a current rent roll, and for Unstabilized Developments use actual rents based on the most recent units leased with occupancy and leasing velocity. The Underwriter may adjust actual rents to reflect lease-up concessions and other market considerations.

(viii) Pro Forma Rent is the monthly rent amount collected for each Unit Type: Contract Rent for rent-assisted units and the lesser of the Net Program Rent, Achievable Affordable Rent, Market Rent or actual rent for others.

(B) Miscellaneous Income. The Underwriter will use $5 to $30 per Unit per month for all ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income. The Underwriter may make exceptions if supported by either the Development's normalized operating history or other existing comparable properties within the same market area.

(i) The Applicant must show tenants will not be required to pay the additional fee or charge as a condition of renting a Unit and tenants have a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with

miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) The Underwriter will heavily discount collection rates of exceptional fee items.

(iv) If the Owner will charge an additional fee for the optional use of an amenity, Eligible Basis must not include any cost associated with the construction, acquisition, or development of the hard assets needed to produce it.

(C) Vacancy and Collection Loss. The Underwriter uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss) or 5% combined for 100% project-based rental subsidy developments (not including employee-occupied units).

(2) Expenses.

(A) General and Administrative Expense. Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses; does not include partnership related expenses (asset management, accounting or audit fees) or tenant services.

(B) Management Fee. The Underwriter will use the Applicant's proposed Management Fee if within 4% to 6% of EGI. An Applicant must document a proposed fee outside of this range.

(C) Payroll Expense. Payroll does not include third-party security, tenant services contracts or other staffing not related to customary property operations, which must be itemized and included in other expenses.

(D) Repairs and Maintenance Expense. Does not include costs customarily capitalized resulting from major replacements or renovations.

(E) Utilities Expense. An unrelated contractor or component vendor must document Estimates of utility savings from green building components, including on-site renewable energy.

(F) Water, Sewer, and Trash Expense.

(G) Insurance Expense. Does not include health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) The Underwriter will calculate an assessed value calculated based on the capitalization rate if published by the county taxing authority, or either 10% or a comparable assessed value if not.

(ii) The Underwriter may use other assessed values or property tax estimates based on development specific factors.

(iii) The Applicant must provide documentation in accordance with §10.402(d) of this title if proposing a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement. The Underwriter may require such documentation prior to Commitment or Determination Notice.

(I) Replacement Reserves. The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all others, or more if documented by a primary lender or syndicator. The Underwriter may require an amount above $300 for the Development based on information provided in the SCR or an amount approved by USDA. The Underwriter may adjust the Applicant's assumption for reserves if the amount is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (EGI must reflect tenant reimbursements) and TDHCA's compliance fees, not depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The Underwriter may include a Return to Owner approved by USDA or an amount it determines. This category does.

(K) Resident Services. The Underwriter will not include resident services as an operating expense or in the DCR calculation unless:

(i) the Application documents a financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount included in the DCR calculation; or

(ii) the Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties in the local area; and

(iii) on-site staffing or pro ration of staffing for coordination of services only (not the provision of services) can be included.

(L) Pro-Forma. In determining the operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based on

(i) the characteristics of each Development, including the location, utility structure, type, the size and number of Units

(ii) the Applicant's management plan

(iii) historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development

(iv) actual operations on the Applicant's other properties monitored by the Department, if any

(v) the proposed management company's comparable properties

(vi) the Department's database of properties located in the same market area or region as the proposed Development

(vii) expense data from the Department's database on the Department's website

(viii) the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region

(ix) local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate, and

(x) estimates of utility savings from green building components, including on-site renewable energy.

(3) Debt Coverage Ratio. The Underwriter will calculate loan terms (including principal and interest payments) based on the terms in the loan documents if executed, or the most current term sheet(s) if not. The Underwriter may consider unusual or non-traditional financing structures.

(A) Interest Rate. The Underwriter will use the rate documented in the term sheet(s) or loan document(s for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's

underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate. At initial underwriting, the Underwriter may adjust the interest rate assumption based on market data of similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the minimum amortization period is 30 years and maximum is 40 years (up to 50 for federally sourced or insured loans except for transactions that include Direct Loan funds). The Underwriter will use the permanent lender's amortization period within that range. Non-HTC transactions may use a lesser amortization period if the Direct Loans will be fully amortized over the same period.

(C) Repayment Period. For permanent financing structures with balloon payments in less than 30 years, the Underwriter will project the DCR over a 30 year period by carrying forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except in clauses (i) or (ii) of this subparagraph, the first year stabilized pro forma DCR must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for HTC Developments at cost certification).

(i) If the DCR is less than the minimum, the Report recommendations may be based on a reduction to debt service and the Underwriter will adjust the financing structure in the priority order in subclauses (I) - (IV) of this clause (subject to Direct Loan NOFA requirements and program rules):

(I) a reduction to the interest rate of a Direct Loan that still meets the minimum in the applicable NOFA;

(II) an increase in the amortization period of a Direct Loan; and

(III) a reduction in the principal amount of a Direct Loan; or an assumed reduction in the permanent loan amount for non-Department funded loans based on the rates and terms in the permanent loan term sheet(s), as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the Report recommendations may be based on an increase to debt service and the Underwriter will adjust to assumed financing structure in the priority order in subclauses (I) - (III) of this clause (subject to Direct Loan NOFA requirements and program rules):

(I) an increase to the Direct Loan interest rate up to the lesser of the maximum pursuant to a NOFA or on any senior permanent debt (if none, as determined by the Underwriter based on current market interest rates); or a decrease in the Direct Loan amortization (not less than 30 years); and

(II) an assumed increase in non-Department permanent loan amount(s) based on the rates and terms in the term sheet if within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) The Department may reduce the recommended HTC Allocation Amount based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption.

(iv) Developments financed with a Direct Loan subordinate to FHA financing subject to HUD's Multifamily Accelerated Processing Guide must meet a combined DCR of 1.0 using 75% of surplus cash after deducting the senior debt service from NOI. To calculate the combined DCR: service)*75%))) / (FHA senior debt service + amortized MDL debt service)

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and if the Direct Loan is the senior primary debt.

(4) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor for income and a 3% for operating expenses, except for management fees calculated based on a percent of EGI.

(C) Adjustments based on satisfactory support documentation provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department will base the estimate of Total Housing Development Cost on the Applicant's Development cost schedule to the extent the Underwriter can verify it to a reasonable degree of certainty using available tools and with documentation from the Applicant. For New Construction Developments, the Department will use Underwriter's total cost estimate unless the Applicant's is within 5% of it. The Department will base the estimate for Rehabilitation Developments or Adaptive Reuse Developments on the estimated cost in the SCR (the Underwriter may make adjustments). If the Applicant's line item costs are inconsistent with the Application or program rules, the Underwriter may adjust. For Competitive HTC Applications, the Underwriter will adjust an Applicant's cost schedule line item to meet program rules but not make subsequent adjustments to meet feasibility requirements.

(1) Acquisition Costs. All appraised values must be based on as-is values at the time of Application as further stated in §11.304 of this chapter.

(A) Land, Acquisition and Rehabilitation, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition with no building acquisition cost in basis or when the acquisition is not part of the Direct Loan eligible cost and not subject to URA appraisal requirements, the underwritten acquisition cost will be the amount(s) in the Site Control document(s). At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement.

(ii) For an identity of interest acquisition or when required by URA, the underwritten acquisition cost will be the lesser of the amount(s) in the Site Control documents or the value determined by an appraisal meeting the requirements of §11.304 of this chapter. An appraisal is not required for donated land or buildings if no costs of acquisition appear on the Development Cost Schedule. Site Control documents must include the settlement statement for the most recent third-party acquisition where the most recent arms-length transaction occurred within five years of the application submission date. An acquisition is an identity of interest transaction when an Affiliate of the seller is an Affiliate of, or a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property as of the first date of the Application Acceptance Period (or the Application Acceptance Date for Direct Loans); or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period (or the Application Date for a tax-exempt bond application).

(iii) TDHCA prohibits cash-out to a related-party seller in an identity of interest transaction for Competitive HTC Applications (does not apply to Existing Developments funded by USDA, or those that include a Nonprofit, a Housing Authority, or an instrumentality of a Housing Authority in the ownership structure). For purposes of this paragraph, cash-out is the lesser of the amount reflected in the Site Control documents or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter, minus the payoff of any third-party debt unrelated to the seller, related-party notes in place specifically for substantiated capital expenditures or acquisition costs, and the principal balance of any seller note to remain in place post-acquisition. Holding costs and operating expenses, such as broker fees, property taxes, deferred maintenance, or deferred management fees, do not count when calculating or justifying seller cash-out. At Application, Department underwriting requires amortization schedules and projected loan balances at closing for all existing unrelated third-party debt to substantiate the calculation of cash-out. The term sheet and seller notes in identity of interest transactions must comply with the following requirements:

(I) be cash-flow contingent, with no required payments unless surplus cash is available;

(II) have no DCR requirements for payment eligibility;

(III) state that the seller note is paid after deferred developer fee.

(iv) For all identity of interest acquisitions, the amount allowed at cost certification will be limited to the acquisition cost underwritten in the initial Application Underwriting.

(v) If the Applicant or a Related Party will acquire more land than the Development will use, and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the Underwriter will prorate the Site value based on acreage from the total cost in the Site Control document(s) or the appraisal (if required). In making a proration, the Underwriter may use an appraisal containing segregated values for the total acreage to be acquired, the acreage for the Site and the remainder acreage. The Underwriter will not use a prorated value greater than the total amount in the Site Control document(s).

(B) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the USDA approved transfer value.

(C) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by an appraisal meeting the requirements of §11.304 of this chapter. If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will use the appraisal land value and adjust the building acquisition cost accordingly.

(2) Off-Site Costs. The Underwriter will only consider Off-Site Construction costs that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider Site Work costs (including site amenities) that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will estimate building costs using

(i) the Marshall and Swift Residential Cost Handbook (M&S) or other comparable published Third Party cost estimating data sources,

(ii) historical final cost certifications of previous HTC developments, and

(iii) other acceptable cost data available.

(B) Applications must support costs for multi-level parking structures by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider a sales tax exemption for nonprofit General Contractors and any amenities, specifications and development types not included in the M&S base costs.

(C) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed speaking to all Off-Site Construction, Site Work, and building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so the reader can understand the work, arranged consistent with the line-items on the SCR Supplement, and consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement to estimate Total Housing Development Costs if adequately described and substantiated in the SCR report.

(5) Contingency. The maximum total contingency, including for soft costs, is a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments and 10% for Rehabilitation and Adaptive Reuse Developments. For HTC Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit.

(A) The maximum General Contractor fees, including to achieve a sales tax exemption or any contractor fees to Affiliates or Related Party subcontractors, is a total of

(i) 14% on Developments with Hard Costs of $3 million or greater,

(ii) the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and

(iii) the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less.

(B) Total Housing Development Costs will not include any amounts in excess of the limits of subparagraph (A) of this paragraph.

(C) For HTC Developments, the percentages are applied to the sum of the Eligible Hard Costs. For Developments also receiving USDA financing, the combination of builder's general requirements, builder's overhead, and builder's profit cannot exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs

will be limited to the same percentage of ineligible Hard Costs but will not count as Eligible Basis.

(D) General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs.

(7) Developer Fee.

(A) For HTC Developments, the Developer Fee included in Eligible Basis cannot exceed the following percents of the eligible costs, less Developer Fee, for Developments proposing 50 Units or more, 15%, and 49 Units or fewer, 20%. The Department

(i) will exclude any Developer Fee above this limit from Total Housing Development Costs, and

(ii) may determine any of the following costs count as Developer Fee: site selection and contracting; identifying and negotiating funding sources; filing applications; securing permits and approvals; selecting and contracting with service providers, including the General Contractor; construction oversight; consultative services; guaranties, financial, or credit support if a Related Party or Affiliate; and any other customary or similar activities determined by the Department.

(B) For HTC Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs. All fees to Affiliates or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or its Principal(s) and the Developer's costs for general and administrative expenses (including, but not limited to, travel, dining, and courier fees) are part of the Developer Fee.

(C) For HTC Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(D) For non-HTC Developments, the percentage can be up to 7.5% of Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. Term sheets must include all fees required by the construction lender, permanent lender and equity partner. Eligible construction period interest is limited to the lesser of the actual amount or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s) (Tax-Exempt Bond transactions may include up to 24 months of interest). Any excess over this amount will not count as Eligible Basis. Construction period interest on Related Party or Affiliate construction loans counts as Eligible Basis only with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms, and the Related Party lender routinely engages in construction financing to unrelated parties.

(9) Reserves. The Underwriter will use the amount presented in the Applicant's Development Cost Schedule up to 12 months of stabilized operating expenses plus debt service (24 months for USDA or HUD-financed rehabilitation transactions), and exclude amounts exceeding these limits from Total Housing Development Costs.

(10) Soft Costs. The Underwriter will use the Applicant's costs, comparative data, and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs, including any one-time fees or payments. Any upfront ground lease payments to a Housing Finance Corporation, Public Finance Corporation, Housing Authority, or Nonprofit that is part of the project ownership structure or is otherwise involved in the project to qualify for a property tax exemption are excluded. The Underwriter will not develop independent estimates of Soft Costs for Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer.

(f) The Underwriter may determine an Application is infeasible despite all components of the Development plan technically meeting the other individual requirements of this section due to serious concerns and unmitigated risks identified during the underwriting process. Any such recommendation is subject to Appeal as further provided for in §11.902 of this chapter.

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. If the Underwriter determines any of the buildings, drives, or parking areas reside within the 100-year floodplain, the Report will include a condition that:

(A) the Applicant must pursue and receive a Letter of Map Amendment or Letter of Map Revision; or

(B) the Applicant must identify the cost of flood insurance for the buildings in the 100-year floodplain, or the entire property if a Direct Loan transaction, and certify obtaining it; and

(C) the Development will comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Direct Loans. The Underwriter will not recommend a Direct Loan for approval if the DCR exceeds 1.50 any year during the longer of the term of the Direct Loan or the Federal Affordability Period. If the Underwriter does not recommend a Direct Loan for approval, the Underwriter will base remaining feasibility considerations under this section on a sources schedule without it. The foregoing will not apply if the Applicant to either subparagraph (A) and (B) of this paragraph. This standard will also apply when the Owner seeks approval for a request for a subordination agreement or a refinance, except the total special reserve amount will be based on the Cash Flow reflected in the underwriting at that time.

(A) Elects to commit 25% of annual Cash Flow to a special reserve account in accordance with §10.404(d) of this title) for any year the DCR is over 1.50. The Owner will make deposits into the special reserve account annually from 25% of remaining annual cash flow until reaching the total special reserve amount. A special reserve account is not eligible for Developments layered with FHA financing subject to HUD's Multifamily Accelerated Processing Guide. The Department will calculate:

(i) Annual Cash Flow after deducting any payment due to the Developer on a deferred developer fee loan and any scheduled payments on cash flow loans, and

(ii) the total special reserve amount based on the Cash Flow at Direct Loan Closing underwriting.

(B) Applicant requests an increase in the Direct Loan interest rate at Direct Loan Closing underwriting if financially feasibility is still met.

(h) Work Out Development. See the Department rules pertaining to asset management.

(i) Feasibility Conclusion. The Report will characterize a Development as infeasible if either paragraph (1) or (2) of this subsection applies or one or more of paragraphs (3) or (4) of this subsection applies, unless paragraph (5)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The Underwriter will use either the Market Analysis capture rates or independently acquired demographic data to calculate demand and may determine the capture rates based on an analysis of the Sub-market. Any capture rates exceed the following: Figure: 10 TAC §11.302(i)(1)

(A) Developments meeting the requirements of subparagraph (B), (C), (D) or (E) of this paragraph may avoid being infeasible if clause (i) or (ii) of this subparagraph apply:

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area on a Unit for Unit basis and gives the displaced tenants a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing (an existing land use restriction agreement or rents are at or below 50% AMGI) which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. For Applicants requesting a HTC allocation, the estimated Deferred Developer Fee is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Initial Feasibility.

(A) The first year stabilized pro forma operating expense divided by the first year stabilized pro forma EGI is greater than 68% for Rural Developments 36 Units or fewer, and 65% for all others (does not apply at cost certification).

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(4) Long Term Feasibility. The Long Term Pro forma reflects:

(A) a Debt Coverage Ratio below 1.15 at any time during years two through fifteen; or

(B) negative Cash Flow at any time either throughout the term of a Direct Loan or during years two through fifteen for applications not requesting a Direct Loan.

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

(B) Developments infeasible under one or more of paragraphs (3)(A) or (4) of this subsection will be feasible if one or more of clauses (i) - (v) of this paragraph apply (not available for paragraph (4)(B) of this subsection if the Development has a Direct Loan). The Development:

(i) will receive Project-based Section 8 Rental Assistance, Section 18 disposition, or RAD Program for at least 50% of the Units and the Application includes a firm commitment (including Contract Rent and number of Units);

(ii) will receive USDA rental assistance for at least 50% of the Units;

(iii) will be characterized as public housing for at least 50% of the Units;

(iv) meets the requirements under §11.1(d)(118)(E)(i) of this chapter; or

(v) has other long term project based support for at least 50% of the Units that allows rents to increase based on expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford and include the following statements:

(1) The author is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis.

(2) The fee is in no way contingent upon the outcome of the Market Analysis.

(3) The Market Study conforms to applicable Department rules.

(4) "Any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis must allow the reader to understand the data, analysis, and conclusions. All data must reflect the most current information available and include a parenthetical (in-text) citation or footnote describing the source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. The report must present all steps leading to a calculated figure.

(c) Market Analyst Qualifications. A Market Analysis must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The Department will update and publish an approved Qualified Market Analyst list annually on or about November 1st. A Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the applicable Application Acceptance Period. An already approved Qualified Market Analyst will remain on the list so long as it is the author of at least one (1) Market Analysis submitted to the Department in the previous 24 months or it submits items (A), (B), (C) and (E) prior to October 1st of the second year following the analyst's most recent submission.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all expected providers.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to this section in effect for the current year.

(2) Any discrepancies with this section may require timely correction. The Department may remove an analyst from the approved list for not conforming to the Market Analysis Rules and Guidelines.

(A) Removal from the approved list alone will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Market Analysis Rules and Guidelines.

(d) Market Analysis Contents. A Market Analysis must include, at minimum, items addressed in paragraphs (1) - (13) subsection.

(1) Title Page. Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location and description, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, signatures of all Market Analysts authorized to work on the assignment, and a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report.

(4) The Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Description of all assumptions, both general and specific, made concerning the Property.

(6) Identification of the Real Estate. A statement to acquaint the reader with the Development, including street address, tax assessor's parcel number(s), and characteristics.

(7) Statement of Ownership. The current owners of record and a three year history of ownership.

(8) Primary Market Area (PMA)). A limited geographic area from which the Development is expected to draw most of its demand. The Market Analyst must base all conclusions specific to the subject Development on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph. (§2306.67055)

(A) The Market Analyst will define the PMA as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the PMA population may exceed 100,000 if the amount over is in a single census tract. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that tenants would migrate from larger cities.

(B) The Market Analyst's definition must include the following:

(i) A detailed narrative specific to the PMA explaining:

(I) how the PMA boundaries were determined with respect to census tracts chosen and factors for including or excluding tracts in proximity to the Development;

(II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas;

(IV) what specific attributes of the Development itself (if known) would draw prospective tenants currently residing in other areas;

(V) if the PMA crosses county lines, discussion of the different income and rent limits in each county and how differing amounts would affect demand;

(VI) for rural Developments, discussion of the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities) in and around the PMA;

(VII) discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent.

(ii) A complete demographic report.

(iii) A scaled distance map indicating the PMA boundaries showing relevant census tracts with complete 11-digit identification numbers in numerical order with labels, the location of the subject Development and all comparable Developments, and the PMA's total square miles.

(iv) A proximity table indicating distances and drive time estimates to employment centers, medical facilities, schools, entertainment, and any other amenities relevant to the potential residents.

(C) Comparable Units. Identify developments in the PMA with Comparable Units and provide a data sheet for each consisting of the clauses (i) - (vii) of this subparagraph. In PMAs lacking sufficient rent comparables, the Market Analyst may need to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments.

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area and monthly rent and Utility Allowance or sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to subject's targeted tenant population; and

(xii) for rental developments, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) subparagraph, if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports must include:

(i) population and household data for a five year period using Application submission as the base year;

(ii) sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) for Elderly Developments, a detailed breakdown of households by age and by income; and

(iv) a complete copy of all demographic reports relied on for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the Development as a whole and each Unit Type by number of Bedrooms and rent restriction category using the most current census and demographic data available. Where appropriate, the appropriate household size is based on two persons per Bedroom (round up), or one for Efficiency Units.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households who will live in the proposed Development (e.g., elderly populations and other qualifying residents for an Elderly Development), if available, and avoid making adjustments from more general demographic data. Identify and document the source of adjustment rates used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause.

(I) Population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served.

(III) Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category.

(IV) Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed, divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size.

(V) Adjust the income-eligible household projections for tenure (renter or owner) unless tenure appropriate income eligible target household data is available.

(ii) Gross Demand. The sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population, minimum eligible income is based on a 40% rent to income ratio and the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms, minimum eligible income is based on a 40% rent to income ratio and Gross Demand includes both renter and owner households.

(IV) For Elderly Developments, minimum eligible income is based on a 50% rent to income ratio and Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) For Supportive Housing minimum eligible income is $1 and households meeting the occupancy qualifications of the Development. Data to quantify this demand may be based on

statistics beyond the defined PMA but not outside the Applicant's historical service area.

(VI) For Units with rent assisted units (Project Based Vouchers or Rental Assistance, Public Housing Units) minimum eligible income is $1 and maximum eligible income is the minimum eligible income of the corresponding affordable unit.

(iv) Assume an additional 10% of Potential Demand coming from outside the PMA as External Demand.

(v) For Demand from Other Sources:

(I) state the source of additional demand and the methodology used to calculate the additional demand;

(II) consideration of Demand from Other Sources is at the Underwriter's discretion;

(III) Demand from Other Sources must be limited to households not included in Potential Demand; and

(IV) if the Market Analysis identifies households with Section 8 vouchers as a source of demand, it must include documentation of the number of vouchers administered by the local Housing Authority and a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the PMA, including existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type in the PMA.

(B) Rents. Provide separate Market Rent and Achievable Affordable Rent conclusions for each proposed Unit Type by number of Bedrooms and rent restriction category and a separate attribute adjustment matrix. Document Market Rent and Achievable Affordable Rent below the maximum Net Program Rent limit.

(i) HUD Form 92273.

(ii) Each attribute adjustment matrix must have a minimum of three developments must be represented.

(iii) Include adjustments for concessions, if applicable.

(iv) Include adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description and the rationale for the amount(s).

(v) Support total adjustments in excess of 15% with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent and Achievable Affordable Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) State the Gross Demand:

(i) for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g., one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI);

(ii) for the proposed Development as a whole (If some households are eligible for more than one Unit Type, adjust Gross Demand to avoid including households more than once); and

(iii) generated from each AMGI band (If some household incomes are included in more than one AMGI band, adjust Gross Demand to avoid including households more than once).

(E) The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) The proposed subject Units to be absorbed.

(ii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days, including:

(I) the HTC Development Inventory published on the Department's website as of December 31st of the year preceding the Application Acceptance Period for Competitive HTC Applications;

(II) the most recent HTC Development Inventory published on the Department's website one month prior to the Application date of non-competitive HTC and Direct Loan Applications.

(iii) Unstabilized Comparable Units that are close to the subject PMA either likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts. The Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i).

(F) The Gross Capture Rate is the Relevant Supply divided by the Gross Demand (see §11.302(i) of this chapter).

(G) Individual Unit Capture Rate for each Unit Type by number of Bedrooms and rent restriction categories is the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types; include each in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band (20%, 30%, 40%, 50%, 60%, 70%, and 80%), is the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands; include each in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve the occupancy level at which income equals all operating expenses and mandatory debt service requirements.

(J) Market Impact. Provide an assessment of subject Development's impact on existing HTC Developments in the PMA. (§2306.67055)

(11) Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables.

(12) Provide in appendix form any Third Party reports used (including demographics) and a list of works cited (including personal communications).

(13) Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietor-

ships) and any changes to items listed in subsection (c)(1)(B) and (C) of this section.

(e) The Department may require the Market Analyst to address other issues relevant to evaluation of the need for the subject Development and particular program guidelines.

(f) If the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMAs and all proposed and Unstabilized Units. The Underwriter may use the Gross Capture Rate from such an extended Sub-Market Area analysis as the basis for a feasibility conclusion.

(g) All Applicants will acknowledge, by virtue of filing an Application, that the Department is not bound by the Market Analysis and may substitute its own analysis and underwriting conclusions.

§11.304. Appraisal Rules and Guidelines.

(a) General Provision.

(1) An appraisal prepared for the Department must

(A) conform to the Uniform Standards of Professional Appraisal Practice;

(B) be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board;

(C) include a statement that the report preparer has read and understood the requirements of this section;

(D) include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal, and that the fee is in no way contingent upon the outcome of the appraisal, and

(E) describe sufficient and adequate data and analyses to support the final opinion of value.

(2) If an appraisal is required by the URA it must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378.

(3) The final value(s) must be reasonable based on the information included. The appraiser must verify any Third Party reports relied on.

(b) Appraiser Qualifications. The appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(c) Appraisal Contents. An appraisal must be organized in a format that follows a logical progression and include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement with the following:

(A) identifying the Department as the client,

(B) acknowledging the Department has full authority to rely on the findings of the report, and name and address of person authorizing report, and

(C) "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, the effective date, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, signatures of all appraisers authorized to work on the assignment (including the inspector), and a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property within the past three years and disclose any pending agreements of sale, options to buy, or listing of the subject Property.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraaph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Site. Include a plat map or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map identifying the subject Property identified.

(C) Zoning. Reports must include:

(i) the current zoning and description of the zoning restrictions;

(ii) probability of change in zoning;

(iii) any deed restrictions, where applicable;

(iv) the type of Development permitted;

(v) whether the improvements conform to the current zoning and could be rebuilt if damaged or destroyed;

(vi) if applicable, time and expense associated with the proposed zoning change if the zoning is inconsistent with the highest and best use and changes are reasonable to expect; and

(vi) a zoning map.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc., and all applicable forms of depreciation along with the remaining economic life.

(E) Environmental Hazards. The report must disclose any potential environmental hazards (discolored vegetation, oil residue, asbestos-containing materials, lead-based paint, etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use, including consideration of paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must state any positive or negative market trends influencing the Property value, including detailed data to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated") considering all four elements (legally permissible, physically possible, feasible, and maximally productive).

(9) Appraisal Process. The Appraisal must consider all three approaches, Cost, Sales Comparison, and Income in valuing the Property. If an approach is not applicable, provide an adequate explanation why.

(A) Cost Approach. An estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported. Provide a land value estimate if the Cost Approach is not applicable.

(i) Obtain cost comparables or alternative cost information from Marshall & Swift Valuation Service or similar publications) (reference the section, class, page, etc.). Address and document all soft costs and entrepreneurial profit.

(ii) Discuss and analyze all applicable forms of depreciation consistent with the description of the improvements.

(iii) The land value estimate should include sufficient current and comparable sales similar to the subject in terms of highest and best use. Comparable sales information must include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate must fall within the adjusted and unadjusted value ranges. When applicable, make consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause.

(I) property rights conveyed;

(II) financing terms;

(III) conditions of sale;

(IV) location;

(V) highest and best use;

(VI) physical characteristics (e.g., topography, size, shape, etc.); and

(VII) other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. Include an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. Confirm the sales with the buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information must include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. Include a scaled distance map clearly identifying the subject and the comparable sales.

(ii) The method(s) used in the Sales Comparison Approach must reflect actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Include sufficient narrative to permit the reader to understand the direction and magnitude of the individual adjustments and a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. Calculate the Net Operating Income statistics for the comparables in the same manner. Disclose if reserves for replacement have been included. At least one other method must accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects.

(i) Market Rent Estimate/Comparable Rental Analysis. Include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type and be confirmed with the landlord, tenant or agent. Include individual data sheets with property address, lease terms, description (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics, and location of the comparables. Analysis of the Market Rents must be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Consider adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc.

(ii) Comparison of Market Rent to Contract Rent. Report, summarize, and analyze actual income for the subject along with the owner's current budget projections. If such data is unavailable, make a statement to this effect is required and appropriate assumptions and limiting conditions. The Contract Rents must be compared to the market-derived rents. Make a determination as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, qualify its impact on value.

(iii) Vacancy/Collection Loss. Report historical occupancy data and current occupancy level for the subject and compare it to occupancy data from the rental comparables and overall occupancy data for the PMA.

(iv) Expense Analysis. Report, summarize, and analyze actual expenses for the subject, along with the owner's projected budget. If such data is unavailable, include a statement to this effect is required and make appropriate assumptions and limiting conditions. Compare historical expenses to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Reconcile any expense differences. Include historical data regarding the subject's assessment and tax rates and a statement as to whether any delinquent taxes exist.

(v) Capitalization. Present the capitalization method(s) reflecting of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If using a band of investment or mortgage equity technique, fully disclose and discuss the assumptions.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis must include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value, and support for the discount rate.

(10) Value Estimates. All appraised values must be based on as-is values at the time of Application. Reconciliation of final value estimates is required. The Underwriter may request additional valua-

tion information based on unique existing circumstances relevant for deriving market value.

(A) All appraisals must contain a separate estimate of the "as vacant" market value of the underlying land, based on current sales comparables"" assuming no improvements on the property (not considering demolition costs). The appraiser must consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance remaining with the property after acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. The appraiser must fully explain and support, to the Underwriter's satisfaction, if the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rents or occupancy on project-based developments.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value based on the current restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing from a government entity that will remain in place and transfer to the new owner, the appraisal must include a separate value for it with supporting information. The appraiser will allocate 25% of the appraised favorable financing value to land value and 75% to building value, unless the use was only for rehabilitation, in which case 100% will be attributed to the building. Applicant's allocation of favorable financing should be clearly explained.

(F) The appraiser must include either a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items or a statement such items are not part of the transaction.

(11) Marketing Time. The appraiser(s) must employ a reasonable marketing period and detail existing market conditions and relevant assumptions.

(12) Photographs. Provide good quality labeled color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available) the neighborhood, street scenes, and comparables.

(d) Additional Appraisal Concerns. The appraisal must include an analysis of any impact to the subject's value of the Department program rules and guidelines.

§11.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The ESA prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM) including the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published) for the initial report. The ESA must

(1) be conducted by a Third Party environmental professional at the Applicant's expense;

(2) be addressed to the Department as a User of the report, as defined by ASTM standards (ESAs commissioned by other institutions must either address TDHCA as a co-recipient or be accompanied by letters from both the provider and the recipient extending reliance on the report to the Department);

(3) include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment;

(4) include the following statement, "Any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law; and

(5) contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if it recommends a noise study for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise.

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection.

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map.

(4) If the subject Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration.

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water.

(6) Assess the potential for the presence of Radon and recommend specific testing if necessary.

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities (does not include liquified petroleum gas containers with a capacity of less than 125 gallons) that could potentially adversely impact the Development. A drawing or map must show the location of these items in relation to the Site and all existing or future improvements and depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations.

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10 or any subsequent standards as published).

(c) If the report recommends further studies or establishes that on- or off-site environmental hazards affect the Property, the Owner must act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. The Application must include evidence of the action or a plan.

(d) For Developments in programs that allow a waiver of the Phase I ESA, the Owners are responsible to ensure the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or will receive first lien financing from HUD may submit HUD's environmental assessment report if it conforms to the requirements of this section.

§11.306. Scope and Cost Review Guidelines.

(a) General Provisions. The SCR required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments must

(1) evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs;

(2) be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates;

(3) include a copy of the Development Cost Schedule submitted in the Application; and

(4) include the following statement: "Any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis conforming with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018, or any subsequent standards as published)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include labeled photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure).

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description (with photographs) of the current conditions of all major systems and components regardless of what will be removed, repaired or replaced. For historic structures, the SCR must contain a description (with photographs) of each aspect qualifying as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation. Describe replacement or relocation of systems and components.

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work a description of any new construction, either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Include any plans or drawings, in addition to those required, relating to the scope of work.

(3) Useful Life Estimates. Estimate the remaining useful life of each system and component, citing the basis or the source.

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. The Applicant is responsible for ensuring the SCR adequately considers applicable laws and regulations when developing cost estimates. For Applications requesting a Direct Loan, the SCR must include a comparison between the local building code and the International Existing Building Code.

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced to comply with any specific requirements of a housing program or scoring criteria. The Applicant is responsible for informing the report author of those requirements.

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title and identify the specific items in the scope of work and costs needed to ensure the Development will meet these requirements upon completion.

(7) Reconciliation of Scope of Work and Costs. The SCR must include the SCR Supplement (with the SCR author's signature). The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the SCR report body and the Applicant's scope of work and costs in the Application. The SCR author must reconcile any variations between the costs. The Underwriter will use the consolidated scope of work and costs shown on the SCR Supplement in the analysis to the extent adequately supported in the report.

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component above, citing the basis or the source. For all Rehabilitation and Adaptive Reuse Developments, if applicable, identify immediately necessary repair and replacement for systems or components which

(i) are expected to have a remaining useful life of less than one year,

(ii) are in violation of any applicable codes,

(iii) must be modified, repaired or replaced to satisfy program rules, or

(iv) are otherwise in a state of deferred maintenance or pose health and safety hazards.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the SCR must evaluate either the nature or source of obsolescence to be cured or improvement to operations. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph must be consistent with the costs in the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are or will be associated with the Property. The SCR must estimate the periodic costs for repairing or replacing each system or component or the property based on the estimated remaining useful life adjusted for repair and replacement. The SCR must include a separate table of the estimated long term costs identifying in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. Give the estimates in both present dollar values and

anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) The underwritten Report will not include any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), and (8)(A) and (B) of this section.

(f) The Department also will accept the following reports commissioned or required by the primary lender if such standards meet the criteria in subsection (g) of this section:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports; and

(4) USDA guidelines for Capital Needs Assessment.

(g) The Department may accept reports prepared according to other standards not specifically named in this section if

(1) a copy of such standards or a sample report have been provided for the Department's review,

(2) such standards are widely used, and

(3) all other criteria and requirements described in this section are satisfied.

(h) A Third Party will conduct the SCR at the Applicant's expense and address TDHCA as either the client or a co-recipient accompanied by letters from both the provider and the recipient extending reliance.

(i) The SCR report must include a statement that the author has read and understood the requirements of this section and will not materially benefit from the Development in any other way than receiving a fee for performing it. The provider must not be a Related Party to or an Affiliate of any other Development Team member.

(j) Scope of Work Narrative. An SCR is not required for Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer. The application must provide a Scope of Work Narrative consisting of:

(1) a detailed description of the current conditions of all major systems and components of the Development, regardless of what will be removed, repaired or replaced;

(2) for historic structures, a description of each aspect that qualifies as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation; and

(3) a narrative of the consolidated scope of work for the proposed rehabilitation for each major system and components.

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

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.901. Fee Schedule.

The following are the fees associated with the Department's programs.

(1) General Provisions. Applicants must submit any payment due under this chapter and assume the deadline for such payment is final.

(A) An Applicant with an outstanding balance of unpaid fees under this section will be ineligible to:

(i) apply for Department resources,

(ii) receive additional Department funding associated with a Commitment, Determination Notice or Contract, and

(iii) submit extension requests, ownership transfers, and Application amendments.

(B) Payments of the fees must be in the form of a check unless the Department approves another form. Insufficient funds being available may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Applicants must pay any insufficient payment fees charged to the Department by the State Comptroller. Unless prohibited by other parts of this chapter, the Executive Director may extend the fee deadline for specific extenuating and extraordinary circumstances if the Applicant submits a written request for an extension no later than five business days in advance. Staff may grant relief for a deadline for unusual or unpredictable circumstances outside of the Applicant's control, such as inclement weather or failed deliveries.

(2) Competitive HTC Pre-Application Fee. Applicants must submit with the pre-application a fee of $10 per Unit reflected therein. Documentation of a CHDO or a private Qualified Nonprofit Organization serving as the Managing General Partner (or having Control over such entity) will result in a 10% discount. (§2306.6716(d))

(3) Refunds of Competitive HTC Pre-Application Fees. (§2306.6716(c)) Upon written request, the Department will refund the fee for a Competitive HTC pre-application withdrawn and not fully processed. The amount of refund will be commensurate with the level of review completed:

(A) 50% for initial processing,

(B) 30% for threshold review prior to a deficiency being issued, and

(C) 20% after deficiencies are submitted and reviewed.

(4) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. Applicants having submitted a Competitive HTC pre-application that met the threshold requirements and paid the fee must submit with an Application a fee of $20 per Unit reflected therein. Otherwise, the fee will be $30 per Unit. Documentation of a CHDO or a private Qualified Nonprofit Or-

ganization serving as the Managing General Partner (or having Control over such entity) will result in a 10% discount. (§2306.6716(d))

(B) Direct Loan Applications. The fee is $1,000 per Application if not requesting HTCs. The Application fee is not a reimbursable cost. The Department will waive Application fees for private nonprofit organizations receiving a Direct Loan that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. (§2306.147(b)) Such organizations must include proof of their exempt status and a description of their supportive services as part of the Application.

(5) Refunds of Application Fees. Upon written request, the Department will refund the fee for an Application withdrawn and not fully processed. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed:

(A) 10% for initial processing,

(B) 10% for the site visit,

(C) 40% for program evaluation review, and

(D) 40% for the underwriting review.

(6) Third Party Underwriting Fee. The Department will notify Applicants in writing prior to the evaluation by an independent external underwriter. The Department must receive the fee prior to engaging and the Department will credit such fees paid against the Commitment or Determination Notice Fee, as applicable, in paragraphs (6) and (7) of this section.

(7) Housing Tax Credit Commitment Fee. Owners must pay a fee equal to 4% of the annual HTC Allocation amount no later than the expiration date in the Commitment. The Department may refund 50% of the fee if the Owner returns the allocation by November 1 of the current Application Round.

(8) Tax-Exempt Bond Development Determination Notice Fee. Owners must pay a fee equal to 4% of the annual HTC Allocation amount no later than the expiration date in the Determination Notice, unless the Owner requested an extension. If the Owner has paid the fee and is unable to close on the bonds, the Department may refund 50% of the fee if generally within 90 days of the Certificate of Reservation deadline.

(9) Tax-Exempt Bond Credit Increase Request Fee. Owners requesting the Department increase the annual HTC Allocation amounts on IRS Form(s) 8609 above the amount in the Determination Notice for Tax-Exempt Bond Developments must pay a fee equal to 4% of such increase.

(10) Extension Fees.

(A) All requests to extend deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted fewer than 30 calendar days in advance of the applicable original deadline must include an extension fee of $2,500. The fees for each subsequent extension request for the same activity will increase by increments of $500, regardless of first request submission date.

(B) An extension fee will not be required for Rehabilitation Developments if USDA or the Department, as the primary lender, is responsible for not meeting the deadline. An extension fee for the deadline to submit the Determination Notice and associated documents will not be required if the Owner submits a written request.

(C) An extension fee is due for each Construction Status Report received after the applicable deadline (regardless of whether the Owner requests an extension). For this purpose each report is a separate activity. Unpaid fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609.

(11) Amendment Fees. Owners must pay a fee of $2,500 for material amendment requests (regardless of whether implemented) or non-material amendment requests that have already been implemented. The fees for each subsequent amendment request for the same Application will increase by increments of $500. A subsequent request related to the same Application must include a fee of $3,000 regardless of whether the first request was non-material. Amendment fees and fee increases are not required for the Direct Loan programs during the Federal Affordability Period.

(12) Right of First Refusal Fee. Requests for approval of the satisfaction of the ROFR provision of the LURA must be accompanied by a non-refundable fee of $2,500.

(13) Qualified Contract Pre-Request Fee. An Owner filing a preliminary Qualified Contract Request to confirm eligibility must pay a non-refundable processing fee of $250.

(14) Qualified Contract Fee. An Owner filing a Qualified Contract Request must pay a non-refundable processing fee of $3,000.

(15) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000 unless for Direct Loan only Developments during the Federal Affordability Period. For Developments previously issued bonds by the Department and for which an Assignment, Assumption, and Consent Agreement will need to be executed, the ownership transfer must be accompanied by a written acknowledgement that the requestor will be responsible for the Department's costs incurred for preparation of documents by outside bond counsel.

(16) Unused Credit or Penalty Fee for Competitive HTC Applications. Owners must return any HTCs they cannot substantiate through Cost Certification. Failure to do so will result in a penalty fee equal to the one-year amount of lost HTCs (10% of the total unused amount). The Department may waive this penalty fee without Board action if able to allocate the returned HTCs. If an Applicant returns a full credit allocation after the Carryover Allocation deadline, the Executive Director may recommend the Board impose a scoring penalty for any Competitive HTC Applications submitted by that Applicant or any Affiliate in either a concurrent Application Round (as further provided for in §11.9(f) of this chapter) or, if no Application Round is pending, the Application Round immediately following. The Department must notify the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may issue a formal notice after disclosure upon a determination that the matter does not warrant point penalties.

(17) Compliance Monitoring Fee. The Department will invoice Owners compliance monitoring fees of:

(A) $40 per low-income unit, beginning with the first year of the credit period (collected retroactively if applicable), or

(B) $34 per Direct Loan Unit (including HOME Match Eligible) for Developments with no HTCs, beginning with the first year of after Project Completion. HTC Developments with an existing LURA will owe only the forgoing fee. Owners must pay the invoice prior to either the issuance of IRS Form 8609 or release of final retainage for Developments with no HTCs. Subsequent anniversary due dates are determined by the month the first building places in service.

(18) Public Information Request Fee. The Department uses the guidelines promulgated by the Office of the Attorney General

to determine the cost of copying and other costs of producing public information requests.

(19) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) The Department may revise any fees charged in the administration of the HTC and Direct Loan programs (including for compliance) as necessary to ensure that such fees cover its costs and expenses. Unless the Department determines otherwise, all revised fees apply to all Applications in process and all Developments in operation at the time of such revisions.

§11.902. Appeals Process.

(a) For Competitive HTC Applications, an Applicant or Owner may appeal Department decisions pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. Matters that can be appealed include:

(1) a determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter and Subchapter C of this chapter, pre-application threshold criteria, and underwriting criteria;

(2) Application scoring;

(3) a recommendation of the amount of Department funding to be awarded;

(4) misplacement of all or part of an Application, mathematical errors in scoring, or procedural errors resulting in unequal consideration;

(5) denial of a requested change to a Commitment or Determination Notice;

(6) denial of a requested change to a loan agreement;

(7) denial of a requested change to a LURA;

(8) any Department decision that results in the termination or change in set-aside of an Application; and

(9) any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Owner.

(c) An Applicant or Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney representing the Applicant. For Application related appeals, the Applicant must specifically identify the grounds for appeal, based on the original Application and additional documentation filed with it, as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the response or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, documentation filed with the Executive Director must disclose full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715(d).

(f) If there is insufficient time for the Executive Director to respond to a Competitive HTC Application appeal prior to posting the agenda for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda before the Executive Director responds.

(g) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already in the Application as reflected in the Department's records.

(h) The decision of the Board regarding an appeal is the final decision of the Department.

(i) The Department will post to its website an appeal filed and any other document relating to the processing of an Application-related appeal. (§2306.6717(a)(5))

§11.903. Adherence to Obligations (§2306.6720).

Any Applicant, Owner, or other Person that fails to adhere to its obligations with regard to Department programs (contractual or otherwise), made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to the following:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty.

(2) In the case of the competitive HTC Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice (subject to appeal to the Board).

§11.904. Alternative Dispute Resolution (ADR) Policy.

The Department encourages the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title. (§2306.082)

§11.905. General Information for Commitments or Determination Notices.

(a) The Department will not issue a Commitment or Determination Notice with respect to any Development for an unnecessary amount in accordance with Code §42(m)(2)(A) or where costs exceed the established limits.

(b) All Commitments and Determination Notices remain subject to applicable law and Department rules, their governing documents, and satisfactory completion of underwriting and all related conditions, including administrative deficiencies.

(c) The Department will notify the appropriate official of the jurisdiction where the Development is located of the Board's issuance of a Commitment Notice.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 or completion of construction and/or apply administrative penalties if:

(1) The Applicant, Owner, or the Development (as applicable) fails, after written notice and a reasonable opportunity to cure, to meet any condition of a Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Owner in the Application.

(2) Any material statement or representation made by the Owner or made with respect to the Owner or the Development is untrue or misleading.

(3) An event occurs with respect to the Applicant or the Owner that would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title if such event had occurred prior to issuance.

(4) The Applicant, Owner, or the Development (as applicable) fails, after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements.

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

(a) Commitment. For Competitive HTC Developments, the Department will issue a Commitment to the Owner confirming that the Board has approved the Application and state the Department's commitment to make an HTC Allocation in a specified amount, subject to the determining feasibility under Chapter 11, Subchapter D of this title and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment expires on the date specified, which will be 30 calendar days from the effective date, unless the Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter, and satisfies any conditions set forth therein. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax-Exempt Bond Developments, the Department will issue a Determination Notice confirming that the Development satisfies the requirements of this chapter and other applicable Department rules in accordance with Code §42(m)(1)(D). The Determination Notice will state the Department's determination of a specific amount of HTCs for which the Development may be eligible. The Determination Notice expires on the date specified, which will be 30 calendar days from the effective date, unless the Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein. For Tax-Exempt Bond Developments utilizing:

(1) a local issuer, the Determination Notice expiration date may be extended for up to five calendar days;

(2) TDHCA as the bond issuer, the expiration date may be extended to coincide with the closing date. The Determination Notice will be valid for a period of one year from its effective date, without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. The one-year period may be extended for up to six months. The Department will not issue a new Determination Notice reflecting a different HTC amount without a new Application submitted.

(c) Documentation Submission Requirements at Commitment of Funds. Owners must provide the documentation in paragraphs (1) - (7) below no later than the Commitment expiration date (or no December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice. Failure to do so may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that it filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, provide a statement to that effect.

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State, a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, provide a statement to that effect.

(3) A corporate resolution indicating that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant.

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions provided for in Chapter 1, Subchapter C of this title, or any other conditions of the award required to be met at Commitment or Determination Notice.

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this title.

(7) For Applications underwritten with a property tax exemption, submit documentation in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed PILOT agreement must provide evidence regarding its statutory basis and terms.

(8) For Competitive HTC Applications, staff may grant relief of the deadline for any documentation that must be submitted under this section for unusual or unpredictable circumstances outside of the Applicant's control (inclement weather or failed deliveries).

(d) Post Bond Closing Documentation Requirements. Regardless of the bond issuer, the Owner must submit the documentation in paragraphs (1) - (6) below no later than 60 calendar days following closing.

(1) Certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing the Owner and on-site or regional property manager attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than three years from the date of submission and must verify completing all parts or phases of the offered training. Two certificates supplied for the same part or phase of an offered training will not count towards the five hour required minimum. The individual reflected on the certificate must be identified on the organizational chart as having Control.

(2) Certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than three years from the date of submission and must verify completing all parts or phases of the offered training. Two certificates supplied for the same part or phase of an offered training will not count towards the five hour required minimum.

(3) Evidence that the financing has closed, such as an executed settlement statement.

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this title.

(5) An initial construction status report consisting of items from §10.401(b)(1) - (6) of this title.

(6) A current survey or plat of the Site prepared and certified by a duly licensed Texas Registered Professional Land Surveyor delineating the floodplain areas and showing all easements recorded against the Property and encroachments.

§11.907. Carryover Agreement General Requirements and Required Documentation.

All Developments that received a Commitment, and will not place in service and receive IRS Form(s) 8609 in that year, must submit the Department's Carryover documentation no later than the Carryover Documentation Delivery Date in §11.2 of this title of the year in which the Commitment is issued.

(1) The Department will terminate Commitments if it does not receive the Carryover documentation by this deadline, unless an extension has been approved. This termination is subject to appeal directly to the Board.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are different at the time of Carryover from the original Application, the Owner must provide applicable documentation. The Department may reduce the HTC allocation or change conditions.

(3) All Carryover Allocations will be contingent upon the Owner providing evidence of maintaining Site Control through the 10% Test or anticipated closing date, whichever is earlier. Owners must address any changes to the Site acreage between Application and Carryover in accordance with §10.405 of this title.

(4) Owners must submit confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State.

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

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SUBCHAPTER F. STATE HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1008

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.1001. General.

(a) This subchapter applies only to 2027 State Housing Tax Credits to supplement HTC awards.

(b) Submissions required to request State Housing Tax Credits are a supplement to an original Competitive HTC Application. Requests for State Housing Tax Credits are not considered Applications under the 2027 HTC Competitive Cycle nor are they part of the 2027 Application Round.

(c) An allocation of State Housing Tax Credits will be processed as a Material Amendment to a Competitive HTC Application under §10.405 of this title. The Department will not charge a fee for this Material Amendment.

(d) For Competitive HTC Applications, revisions to costs included in a request for State Housing Tax Credits will not impact points originally awarded under §11.9(e)(2) and (4) of this title.

(e) Tax-Exempt Bond Developments must meet the requirements of §11.1008 of this chapter.

(f) Developments with HOME funds will enter into a Contract and a LURA for HOME Match Eligible Units.

(g) Credit requests for State Housing Tax Credits are the full ten-year value of the credits rather than the annual allocation and may not exceed the total value of the Development's federal housing tax credits.

§11.1002. Program Calendar for State Housing Tax Credits Associated with Competitive HTC Applications.

Competitive HTC Deadlines. The Department may extend non-statutory deadlines specifically listed in the Program Calendar for a period of not more than five business days if the Applicant has requested an extension in writing prior to the original deadline and has established good cause.

Figure: 10 TAC §11.1002

§11.1003. State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

(a) Only those Applicants electing to request a State Housing Tax Credit allocation by the Full Application Delivery Date specified in §11.2(a) or (b) of this chapter are eligible to request State Housing Tax Credits.

(b) The Department must receive Requests for State Housing Tax Credits by the deadline specified in §11.1002 of this subchapter in the format required.

(c) The minimum request amount is $3,000,000.

(d) Third Party Requests for Administrative Deficiency. The Department will not use the Third Party Request for Administrative Deficiency process during the State Housing Tax Credit process under this subchapter.

§11.1004. Procedural Requirements for Requests for State Housing Tax Credits Associated with Competitive HTC Applications.

(a) The procedures and requirements of §11.201 of this chapter will apply to Requests for State Housing Tax Credits, unless otherwise specified in this Subchapter.

(b) The Department will rely on the Original Application. The request for State Housing Tax Credits must only include the items authorized in this subchapter. Applicants may not submit architectural drawings or other documents relating to changes to the Application other than revisions to the financing structure. The Applicant must submit the required documents as a single PDF document and all spreadsheet exhibits as specified in the Department's released materials. Staff will incorporate these into the Original Application and will become the full Request for State Housing Tax Credits.

§11.1005. Required Documentation for State Housing Tax Credit Request Submission Associated with Competitive HTC Applications.

(a) Only documents listed herein may be submitted.

(b) Certification, Acknowledgement, and Consent of Development Owner. The Owner must execute a certification of the information in this subchapter as well as Subchapter B of this chapter addressing the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein comply with the certification and have given it with all required authority and with actual knowledge of the matters certified. Applicants must certify that there has been no change to the Applicant Eligibility or Original Owner Certification since the Original Application was submitted.

(c) Site Requirements and Restrictions. The Applicant must certify that there have been no changes from the Original Application that would require additional disclosure or mitigation or render the proposed Site ineligible. Any change must be addressed under the requirements of §10.405 of this title.

(d) Site Control. Applicants must certify that there has been no change to Site Control, other than extensions or purchase by the Applicant, since the Original Application was submitted. If the nature of Site Control has changed, Applicants must submit the appropriate documentation as described in §11.204(9) of this chapter.

(e) Zoning. (§2306.6705(5)) If the zoning status of the Development has changed since the Original Application, the Request for State Housing Tax Credits must include all requirements of §11.204(10) of this chapter.

(f) Applicants who elect to request an allocation of State Housing Tax Credits must include a term sheet from a syndicator that, at a minimum, includes:

(1) an estimate of the amount of equity dollars expected to be raised;

(2) the amount of State Housing Tax Credits requested;

(3) pay-in schedules;

(4) syndicator consulting fees and other syndication costs; and

(5) an acknowledgement of the amounts and terms of all other anticipated sources of funds and an intent to elect average income (if applicable).

§11.1006. State Housing Tax Credits Underwriting and Loan Policy Associated with Competitive HTC.

The Department will review Requests for State Housing Tax Credits only for items addressed in this subchapter. The Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the amounts in the Application's most recently published Real Estate Analysis report. The Department will publish a memo for the State Housing Tax Credit allocation serving as a supplement to the report for the Original Application.

§11.1007. State Housing Tax Credits Selection Criteria Associated with Competitive HTC Applications.

For Qualified Developments not financed through tax-exempt bonds, in years when requests for State Housing Tax Credits exceed the amount available, the Department will prioritize applications proposing the most additional low income Units for households at or below 30% of AMGI relative to the State Housing Tax Credit Request (does not include Units proposed in the original application) until the Department can no longer fund a full credit request. In the case of a tie, preference will be based on the Original Application scores under §11.9 of this chapter and, if applicable, the tie breaker factors established under §11.7 of this chapter.

§11.1008. State Housing Tax Credits for Tax-Exempt Bond Developments.

(a) The Uniform Multifamily Application, as prescribed by the Department and further explained in the Multifamily Programs Procedures Manual, will reflect the request for State Housing Tax Credits and include a term sheet from a syndicator including the State Housing Tax Credits request amount and pricing information.

(b) For Applications that will receive a Certificate of Reservation from the TBRB in January, an Applicant may submit the complete Application (with or without Third Party Reports, as described under §11.201(2) of this chapter) from January 2 through January 31. The Department will use a first-come, first-served system for the priority of requests.

(c) Once the number of Applications submitted exceeds the amount of State Housing Tax Credits for Tax-Exempt Bond Developments available, other Applicants will receive notice and the opportunity to modify their Application through the Administrative Deficiency process to exclude the State Housing Tax Credit.

(d) The Department will notify the next Application in line should there be an amount of State Housing Tax Credits allocated to an Application that is withdrawn or terminated, or for which the Certificate of Reservation is withdrawn from the TBRB. Alternatively, staff can make adjustments to other line items to account for the lack of State HTC and notify the Applicant accordingly.

(e) Applications submitted after January 31 and for which a Certificate of Reservation has been issued may include a request for State Housing Tax Credits only if the Department has not reached the maximum amount to allocate for Tax-Exempt Bond Developments.

(f) The Department will issue Qualified Developments an Allocation Certificate, pursuant to Texas Insurance Code Chapters 171 and 233 that will reflect the State Housing Tax Credit Amount.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 475-3959

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CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §13.1

The Texas Department of Housing and Community Affairs (the Department) proposes the amendment of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §13.1 Purpose. The purpose of the proposed amendment is to address changes proposed by the Texas Regulatory Efficiency Office (TREO) and to provide Applicants with additional guidance related to the Build America, Buy America (BABA) Act.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect:

1. The amendment does not create or eliminate a government program, but relates to a minor change for an existing activity: administration of the Multifamily Direct Loan Program.

2. The amendment does not require a change in work that would require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The amendment does not require additional future legislative appropriations.

4. The amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The amendment is not creating a new regulation.

6. The amendment will not repeal an existing regulation.

7. The amendment will not increase or decrease the number of individuals subject to the rule's applicability

8. The amendment will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amendment would be increased flexibility for program participants. There will not be economic costs to individuals required to comply with the amended section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The Department requests comments on the amendment. The public comment period will be held September 18, 2026, through October 19, 2026, to receive input on the amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Priscilla Stevenson, Multifamily Direct Loan Program Specialist, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email priscilla.stevenson@tdhca.state.tx.us ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local (Central) time October 19, 2026.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

§13.1. Purpose.

(a) Authority. The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Parts 91, 92, 93, and 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306.

(b) General. This chapter applies to Applications submitted for, and award of, MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) as applicable. The Applicant is also required to certify that it is familiar with the requirements of any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case-by-case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for the Housing Tax Credit program), as applicable.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), as limited by the rules in this chapter. Waiver requirements are provided in paragraphs (1) through (3) of this subsection:

(1) Rule Waivers and NOFA Amendments prior to Construction Completion. For Direct Loan Developments, an Applicant may request, at the latest at Application submission, that the Department amend its NOFA, amend its Consolidated Plan or One Year Action Plan, or ask HUD to grant a waiver of its regulations, if such request will not impact the timing of the Application's review, nor alter the scoring or satisfaction of threshold requirements for the Housing Tax Credits or other Department resources. Such requests will be presented to the Department's Board. The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD), unless those Plans are so amended by the earlier of a date the NOFA is closed or by an earlier date that is identified by the Board. Such items include §13.8 of this chapter, relating to Loan Structure and Underwriting Requirements, the interest rate published in the NOFA, the maximum subsidy limits as published in the NOFA, the priorities listed in the NOFA, the eligibility requirements of applicants described in rule or the NOFA, scoring, and the tiebreaker procedure. Prior to Contract, except as otherwise described in rule, the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD, if funds are still available in the NOFA. After Contract, but prior to Construction Completion staff will not recommend a waiver or NOFA Amendment;

(2) Build America, Buy America (BABA) Waiver. If the Applicant intends to request a waiver of BABA, such request must be submitted no later than the date on which the Application is submitted. The Department will submit this waiver request to HUD. This waiver, if granted by HUD the earlier of 90 days before the NHTF Commitment deadline or one year from Board Award, will not require the Development to receive a new Application Acceptance Date. The Department will generally not submit public interest waivers. If the Department submits an unreasonable cost waiver, then the execution of the contract for the funds will be delayed until HUD responds to the waiver. Loan closings may also be delayed due to pending waivers;

(3) Waivers under Closed NOFAs. The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in 10 TAC §13.13 of this chapter (relating to Post-Closing Amendments to Direct Loan Terms).

(d) Eligibility and Threshold Requirements. Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

(e) Forms. Where references are made to AIA Form G702, AIA Form G703, AIA Form G704, or Form HUD-92485, these may be substituted for equivalent forms acceptable to the Department.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 116. DIETITIANS

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC), Chapter 116, Subchapter B, §116.10; amendments to existing rules at Subchapter I, §§116.80 - 116.82; and the repeal of existing rules at Subchapter B, §§116.10 - 116.14; and Subchapter I, §116.83, regarding the Dietitians program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 116, implement Texas Occupations Code, Chapter 701, Dietitians; Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department); and other laws applicable to the Commission and the Department.

The proposed rules update Subchapter B, Dietitians Advisory Board, and Subchapter I, Continuing Education, under 16 TAC, Chapter 116. The proposed rules make substantive and clean-up changes to the Dietitians program rules and include changes resulting from legislation, the Department's regulatory efficiency review, and Department staff and workgroup recommendations.

Changes Resulting from Legislation

The proposed rules incorporate and reflect the changes required by SB 2075, Sections 22 and 23, 89th Legislature, Regular Session (2025), which concerns the Dietitians Advisory Board, and SB 25, 89th Legislature, Regular Session (2025), which concerns licensed dietitians' continuing education hours and subject matter requirements.

SB 2075, Sections 22 and 23, made changes to Texas Occupations Code, §701.054(a) and §701.057, by removing the specific start dates of the advisory board members' terms and increasing the presiding officer's term from one year to two years. SB 25 made changes to §§701.302 - 701.304, by requiring certain continuing education subjects and hourly completion for licensed dietitians.

The proposed rules are necessary to update the advisory board rules as required by SB 2075 and to implement the new SB 25 continuing education requirements for licensed dietitians.

Changes Resulting from Regulatory Efficiency Review

The proposed rules make changes resulting from the regulatory efficiency review conducted by the Department and the Texas Regulatory Efficiency Office (TREO) under Texas Government Code, Chapter 465. The proposed rules are necessary to consolidate and streamline the advisory board rules and to meet efficiency goals of the Department and TREO.

Staff and Workgroup Changes

The proposed rules include continuing education rule changes suggested by Department staff and recommended by the Dietitians Advisory Board Education and Examination Workgroup. The proposed rules are necessary to: make human trafficking prevention training eligible for continuing education credit; and update continuing education hours for book and journal article authorship.

Clean-up Changes

The proposed rules include reorganization and clean-up changes. The proposed rules are necessary to: ensure the Dietitians rules are consistent with other Department continuing education and audit rules; conform with current drafting conventions; and increase readability and organization of the rules.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Dietitians Advisory Board at its meeting on August 18, 2026. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

Subchapter B. Dietitians Advisory Board

The proposed rules create a new rule §116.10, Dietitians Advisory Board. This new rule consolidates all advisory board rules under this section and reflects efficiency goals of the Department and the Texas Regulatory Efficiency Office (TREO) under Texas Government Code, Chapter 465. The new rule also replaces repeated statutory language with cross references to the applicable advisory board provisions under Texas Occupations Code, Chapters 701 and 51. These statutory references also include changes made by SB 2075, Sections 22 and 23, which removed the specific start date of the advisory board members' terms and changed the presiding officer's term from one year to two years.

The proposed rules repeal §116.10, Membership. All advisory board rules are consolidated under new rule §116.10.

The proposed rules repeal §116.11, Duties. All advisory board rules are consolidated under new rule §116.10.

The proposed rules repeal §116.12, Terms; Vacancies. All advisory board rules are consolidated under new rule §116.10.

The proposed rules repeal §116.13, Officers. All advisory board rules are consolidated under new rule §116.10.

The proposed rules repeal §116.14, Meetings. All advisory board rules are consolidated under new rule §116.10.

Subchapter I. Continuing Education

The proposed rules amend §116.80, Continuing Education--General Requirements and Hours. The proposed rules provide that a licensed dietitian "must complete 12 hours," rather than "a minimum of 12 hours," of continuing education for each license term. This change aligns with the maximum of 12 hours of continuing education allowed by SB 25.

The proposed rules change the title of §116.81 from "Continuing Education--Approved Courses and Credits" to "Continuing Education--Courses, Activities, and Credits." This title change better reflects the scope and substance of the rule, which addresses courses and activities that are acceptable and unacceptable for continuing education (CE) credit and addresses the amount of credit available for acceptable courses and activities. The proposed rules further amend §116.81 as follows:

Subsection (a) states that CE courses and activities used by licensed dietitians must be offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university while referencing subsections (c) and (d) as exceptions to this requirement.

Subsection (b) and its paragraphs describe which courses and activities are acceptable for licensed dietitians' continuing education. The paragraphs incorporate and consolidate language from former subsections (d)(1) and (d)(2) and acceptable CEs that had been posted on the Department's website. Paragraph (6) of subsection (b) delineates between CE credits for authoring books (3 hours maximum) and journal articles (2 hours maximum) and uses the language "peer-reviewed" rather than "refereed." The words "licensed dietitian" are used to replace "licensee" to reflect current drafting standards.

New subsection (c) implements SB 25 by requiring that on or after January 1, 2027, licensed dietitians seeking license renewal must complete three CE hours in the subjects of metabolic health and the nutritional components and health effects of ultra-processed foods, or topics recommended by the new, Governor-appointed Texas Nutrition Advisory Committee.

New subsection (d) provides that acceptable CE activities or courses include the Texas Jurisprudence Examination (1 hour) and the human trafficking prevention training (1 hour) that is required for license renewal.

Prior subsection (c) is re-lettered as subsection (e), and it lists the unacceptable CE courses and activities. The changes to this subsection include making cleanup changes to the wording of the rule; replacing a reference to "licensee" with "licensed dietitian" to reflect current drafting conventions; and clarifying that courses and activities are contemplated by the rule.

Prior subsection (d) is repealed, since it was consolidated into subsection (b) and new subsection (d).

The proposed rules amend §116.82, Continuing Education--Records and Audits. The proposed rules amend this section by removing obsolete continuing education audit language and replacing this language with a cross reference to Department rule §60.701, Continuing Education Audits for License Renewal. Section 60.701 is located under 16 TAC Chapter 60, Subchapter M, and it applies to continuing education audits of specific Department programs, including the Dietitians program. The continuing education audit rules under §60.701 now apply to licensed dietitians' continuing education audits.

The proposed rules repeal §116.83, Continuing Education--Failure to Complete. The rules in this section are now outdated or duplicative with other rules that serve the same purpose.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Senior Policy Research and Fiscal Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that these proposed rules standardize the advisory board requirements for this program with other agency programs.

Additionally, with regard to CEs, the proposed rules respond to concerns expressed about nutrition and public health by adding a requirement included in SB 25 that license renewal CE hours cover topics related to metabolic health, ultra-processed foods, or topics recommended by the new Texas Nutrition Advisory Committee. SB 25 gave the Commission discretion to determine the number of these CE hours, and the proposed rules establish three hours in this new category.

Further, the changes increase CE options and reword and reorganize CE requirements, providing for better clarity of the pertinent rules. These updates uphold high standards of professional conduct and education, and streamline regulations, helping to safeguard the profession and the people they serve statewide.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules create a new regulation.

The proposed rules create a new regulation with the requirement that, on or after January 1, 2027, licensed dietitians must take three (3) hours of CE relating to metabolic health, ultra-processed foods, or topics recommended by the new Texas Nutrition Advisory Committee.

6. The proposed rules expand, but do not limit or repeal, an existing regulation.

The proposed rules expand existing regulations by adding additional CE options; adding clarification to reflect that not only courses but certain activities can be eligible for CE credit; and adding an update concerning CE hours that licensed dietitians can receive for publishing books or academic journal articles.

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

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

TAKINGS IMPACT ASSESSMENT

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

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

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

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

SUBCHAPTER B. DIETITIANS ADVISORY BOARD

16 TAC §§116.10 - 116.14

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, specifically §51.201 and §51.203, which authorize the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt repeals as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department; and §51.203 and §51.405, which authorize the Commission to adopt continuing education rules for the Department's programs.

The proposed repeals are also proposed under Texas Occupations Code, Chapter 701, specifically §701.151, which establishes the regulatory authority of the Commission and Department under Chapter 701; §§701.051-701.058, which establish the requirements of the Dietitians Advisory Board; and §701.302 and §701.303, which require the Commission to adopt continuing education rules for licensed dietitians.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed repeals.

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted are Senate Bill 25 and Senate Bill 2075, 89th Legislature, Regular Session (2025).

§116.10. Membership.

§116.11. Duties.

§116.12. Terms; Vacancies.

§116.13. Officers.

§116.14. Meetings.

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

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

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16 TAC §116.10

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, specifically §51.201 and §51.203, which authorize the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department; and §51.203 and §51.405, which authorize the Commission to adopt continuing education rules for the Department's programs.

The proposed rules are also proposed under Texas Occupations Code, Chapter 701, specifically §701.151, which establishes the regulatory authority of the Commission and Department under Chapter 701; §§701.051-701.058, which establish the requirements of the Dietitians Advisory Board; and §701.302 and §701.303, which require the Commission to adopt continuing education rules for licensed dietitians.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted are Senate Bill 25 and Senate Bill 2075, 89th Legislature, Regular Session (2025).

§116.10. Dietitians Advisory Board.

(a) Membership. The membership and appointments of the advisory board are governed by Texas Occupations Code §701.051.

(b) Duties. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

(c) Terms and Vacancies. The terms and vacancies of the advisory board are governed by Texas Occupations Code §701.054.

(d) Removal. A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209.

(e) Presiding Officer. The appointment, term, and voting privileges of the presiding officer of the advisory board are governed by Texas Occupations Code §701.057.

(f) Meetings.

(1) The advisory board shall meet pursuant to Texas Occupations Code §701.058 and §51.209.

(2) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(3) Advisory board action shall require a majority vote of those members present and voting.

(g) Other Requirements. In addition to the provisions under Texas Occupations Code, Chapter 701, the advisory board is subject to Texas Occupations Code §51.209 and §51.2094, as applicable.

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

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

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SUBCHAPTER I. CONTINUING EDUCATION

16 TAC §116.83

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51, specifically §51.201 and §51.203, which authorize the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt

repeals as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department; and §51.203 and §51.405, which authorize the Commission to adopt continuing education rules for the Department's programs.

The proposed repeal is also proposed under Texas Occupations Code, Chapter 701, specifically §701.151, which establishes the regulatory authority of the Commission and Department under Chapter 701; §§701.051-701.058, which establish the requirements of the Dietitians Advisory Board; and §701.302 and §701.303, which require the Commission to adopt continuing education rules for licensed dietitians.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed repeal.

The legislation that enacted the statutory authority under which the proposed repeal is proposed to be adopted is Senate Bill 25 and Senate Bill 2075, 89th Legislature, Regular Session (2025).

§116.83. Continuing Education--Failure to Complete.

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

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Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
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16 TAC §§116.80 - 116.82

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, specifically §51.201 and §51.203, which authorize the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department; and §51.203 and §51.405, which authorize the Commission to adopt continuing education rules for the Department's programs.

The proposed rules are also proposed under Texas Occupations Code, Chapter 701, specifically §701.151, which establishes the regulatory authority of the Commission and Department under Chapter 701; §§701.051-701.058, which establish the requirements of the Dietitians Advisory Board; and §701.302 and §701.303, which require the Commission to adopt continuing education rules for licensed dietitians.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted are Senate Bill 25 and Senate Bill 2075, 89th Legislature, Regular Session (2025).

§116.80. Continuing Education--General Requirements and Hours.

A licensed dietitian must complete 12 [~~a minimum of twelve (12)~~] continuing education hours during each two-year license term in accordance with this subchapter [~~licensing period~~].

§116.81. Continuing Education--Courses, Activities, and Credits. [~~Approved Courses and Credits.~~]

(a) Except as provided under subsections (c) and (d), a licensed dietitian must complete the continuing education requirements through courses and activities offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university. [~~The department has determined that to meet the continuing education requirements under the Act and this chapter, a licensee must take the courses and hours offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university.~~]

(b) A licensed dietitian shall receive continuing education credit if the course or activity as prescribed under subsection (a) falls into one or more of the following categories: [~~Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:~~]

(1) academic courses related to dietetics. Completion of coursework at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit;

(2) clinical courses related to dietetics. A course shall be credited on a one-for-one basis with Continuing Professional Education (CPE) as approved by the Academy;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in dietetics. An activity shall be credited on a one-for-one basis with Continuing Professional Education (CPE) as approved by the Academy;

(4) instructing or presenting continuing education programs or activities that were offered or approved by the Commission on Dietetic Registration or its agents. A program or activity shall be credited on a one-for-one basis with Continuing Professional Education (CPE) as approved by the Commission on Dietetic Registration or its agents. Multiple presentations of the same programs only count once;

(5) acceptance and participation in poster sessions offered by a nationally recognized professional organization in the dietetics field or its state equivalent organization. Participation will be credited one hour for six (6) poster sessions with a maximum of two clock hours for twelve (12) poster sessions;

(6) books or articles published by the licensed dietitian [~~licensee~~] in relevant professional books and peer-reviewed [~~referred~~] journals, with three (3) continuing education hours to be credited for books, and two (2) continuing education hours to be credited for articles [~~. A minimum of three (3) continuing education hours will be credited for the publication~~]; or

(7) self-study of professional materials that include self-assessment examinations. Six (6) hours maximum will be credited for self-study during the two-year license term [~~licensure period~~].

(c) On or after January 1, 2027, a licensed dietitian applying for license renewal must complete three (3) hours of continuing education in the subjects of metabolic health, nutritional components and health effects of ultra-processed foods, or topics recommended by the Texas Nutrition Advisory Committee under Chapter 119B, Health and Safety Code.

(d) A licensed dietitian may also receive continuing education credit for the following activities.

(1) A licensed dietitian may complete the Texas Jurisprudence Examination as part of the 12 continuing education hours. One hour of continuing education credit will be granted per license term for successful completion of the Texas Jurisprudence Examination during the license term.

(2) A licensed dietitian may complete the human trafficking prevention training required under Occupations Code, Chapter 116, and rule §116.53 as part of the 12 continuing education hours required under §116.80. One hour of continuing education credit will be granted for completion of the training during the license term.

(e) [~~(c)~~] The following courses and activities are unacceptable as continuing education and will not receive continuing education credit: [~~Activities unacceptable as continuing education for which the department may not grant continuing education credit are:~~]

(1) education incidental to the regular professional activities of a licensed dietitian [~~licensee~~] such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before the current license term;

(4) any courses or activities described in subsection (b), which have been completed more than once during the current license term;

(5) performance of duties that are routine job duties or requirements; or

(6) participation in conference exhibits.

~~[(d) Continuing education experiences shall be credited as follows.]~~

~~[(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit.]~~

~~[(2) An activity which meets the criteria of subsection (b)(2) or (3) shall be credited on a one-for-one basis with Continuing Professional Education (CPE) as approved by the Academy.]~~

~~[(3) A licensee may complete the Texas Jurisprudence Examination as part of the 12 continuing education hours. One hour of continuing education credit will be granted for successful completion of the Texas Jurisprudence Examination.]~~

§116.82. Continuing Education--Records and Audits.

[~~(a)~~] The department shall employ an audit system for continuing education reporting as provided in §60.701. The licensed dietitian [~~licensee~~] shall be responsible for maintaining a record of the licensed dietitian's [~~licensee's~~] continuing education experiences. [~~The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the licensee has been selected for audit.~~]

~~[(b) The audit process shall be as follows:]~~

~~[(1) The department shall select for audit a random sample of licensees for each renewal month. Licensees will be notified of the continuing education audit when they receive their renewal documentation.]~~

~~[(2) If selected for an audit, the licensee shall submit copies of certificates, transcripts, or other documentation satisfactory to the department, verifying the licensee's attendance, participation, and completion of the continuing education. All documentation must be provided at the time of renewal.]~~

~~[(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the licensee.]~~

~~[(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted, and approved by the department.]~~

~~[(5) Licenses will not be renewed until continuing education requirements have been met.]~~

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

Filed with the Office of the Secretary of State on September 4, 2026.

TRD-202603877
Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 463-7750

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.9

The Texas State Board of Pharmacy proposes amendments to §291.9, concerning Prescription Pick Up Locations. The amendments, if adopted, clarify that a dangerous drug may be delivered to the office of a prescriber if the drug is picked up by or administered to the patient in the prescriber's office.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clearer regulatory language that more accurately reflects the Board's requirements for delivery of dangerous drugs to a prescriber's office. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do expand an existing regulation by limiting when a pharmacy may deliver a dangerous drug to a prescriber's office;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Board is requesting public comments on the proposed amendments and information related to the cost, benefit, or effect of the proposed amendments, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed amendments.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.9. Prescription Pick Up Locations.

(a) No person, firm, or business establishment may have, participate in, or permit an arrangement, branch, connection or affiliation whereby prescriptions are solicited, collected, picked up, or advertised to be picked up, from or at any location other than a pharmacy which is licensed and in good standing with the board.

(b) A pharmacist or pharmacy by means of its employee or by use of a common or contract carrier, at the request of the patient, may:

(1) pick up prescription orders at the:

(A) office or home of the prescriber;

(B) residence or place of employment of the person for whom the prescription was issued; or

(C) hospital or medical care facility in which the patient is receiving treatment; and

(2) deliver prescription drugs to the:

(A) office of the prescriber if the prescription is:

(i) for a dangerous drug that is for pick up by or administration to the patient in the prescriber's office; or

(ii) for a single dose of a controlled substance that is for administration to the patient in the prescriber's office;

(B) residence of the person for whom the prescription was issued;

(C) place of employment of the person for whom the prescription was issued, if the person is present to accept delivery; or

(D) hospital or medical care facility in which the patient is receiving treatment.

(c) A pharmacist or pharmacy by use of unmanned aircraft systems (i.e., "drones"), at the request of a patient or patient's agent, may deliver prescription drugs, excluding controlled substances or sterile compounded preparations, to a selected delivery location mutually agreed upon by the patient and the pharmacist using the pharmacist's professional judgment.

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

Filed with the Office of the Secretary of State on September 1, 2026.

TRD-202603792
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 305-8084

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 96. BLOODBORNE PATHOGEN CONTROL

25 TAC §§96.302 - 96.304

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §96.302, concerning Device Registration, §96.303, concerning Registration Procedures, and §96.304, concerning Registration Fees.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal rules related to needleless device registration that are no longer required by statute.

The proposal is necessary to comply with Senate Bill 970, 87th Legislature, Regular Session, 2021, which repealed Texas Health and Safety Code §81.307 and removed the requirement for DSHS to register needleless systems and sharps devices with engineered sharps injury protection. As a result, §§96.302 - 96.304 are no longer necessary and are proposed for repeal to align agency rules with current statute.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§96.302 - 96.304 deletes the rules as no longer necessary because the statutory authority requiring device registration has been removed.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will eliminate a government program;

(2) implementation of the proposed rules will not affect the number of DSHS employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to DSHS;

(5) the proposed rules will not create new regulations;

(6) the proposed rules will repeal existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

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

Christy Havel-Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the repeals remove existing registration requirements.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Timothy Stevenson, Deputy Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the rules will align agency requirements with the current statute and eliminate unnecessary regulatory requirements.

Christy Havel-Burton has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the repeals remove an existing regulatory requirement.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R081" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001, Texas Health and Safety Code Chapter 431, and Texas Health and Safety Code Chapter 81.

The repeals affect Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 1001.

§96.302. Device Registration.
§96.303. Registration Procedures.
§96.304. Registration Fees.

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

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

TRD-202603829
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 834-6755

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CHAPTER 289. RADIATION CONTROL
SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §289.229

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes an amendment

to Title 25, Texas Administrative Code (TAC) §289.229, concerning Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Radiation Therapy Simulation Systems, and Electronic Brachytherapy Devices.

BACKGROUND AND PURPOSE

DSHS proposes to amend 25 TAC §289.229 to clarify existing requirements and update outdated references to ensure consistency with current law and practice.

In 2024, DSHS amended 25 TAC §289.229 which included a prohibition on the remote operation of radiation machines. Following implementation, DSHS determined that the term "remote operation" may be interpreted inconsistently by stakeholders and could be understood to include activities that were not intended to be prohibited, such as a physician's interpretation of images.

The proposed amendment adds a definition of "remote operation" to clarify that the prohibition applies specifically to exposing a patient to ionizing radiation by an operator from a remote location rather than at the healthcare facility where the radiation-producing machine is located.

Additionally, the proposed amendment corrects rule references and removes an obsolete reference, 22 TAC §160.17, which was repealed by the Texas Medical Board in January 2025. The proposed amendment revises language related to licensed medical physicists to align with Texas Occupations Code Chapter 602, to ensure the rule reflects current statutory authority.

The proposed amendment improves clarity, accuracy, and stakeholder understanding of the rule while protecting public health and safety.

SECTION-BY-SECTION SUMMARY

Edits are made throughout the section to delete or update references and non-substantive edits are made to improve readability and formatting.

The proposed amendment to §289.229(b) corrects references.

The proposed amendment to §289.229(c) corrects references.

The proposed amendment to §289.229(e) adds a definition for "remote operation"; adds clarifying language to the definitions of "barrier," "beam-flattening filter," "kilovolt peak (kVp)," "radiation field," and "supervision"; and updates formatting.

The proposed amendment to §289.229(f) corrects references and clarifies existing language.

The proposed amendment to §289.229(h) corrects and updates references and formatting, and amends Figure: §289.229(h)(5)(F)(viii).

The proposed amendment to §289.229(j) updates formatting and clarifies existing language.

The proposed amendment to §289.229(l) amends a figure.

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined that, for each of the first five years the rule is in effect, there are no foreseeable implications for the costs or revenues of state or local governments resulting from enforcing or administering the rule.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

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

Christy Havel Burton has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule because the amendment clarifies existing requirements and does not impose additional costs.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of Texas residents.

PUBLIC BENEFIT AND COSTS

Timothy Stevenson, Deputy Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved clarity and understanding of regulatory requirements, which supports protection of public health and safety.

Christy Havel Burton has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment clarifies existing requirements and does not impose additional costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the

last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R064" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code (HSC) §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001; HSC Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulations; HSC §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; HSC §401.064, which provides for the authority to adopt rules related to inspection of x-ray equipment; HSC §401.101, providing for DSHS registration of facilities possessing sources of radiation; and HSC Chapter 401, Subchapter J, which authorizes enforcement of the Act.

The amendment affects Texas Government Code §524.0151, HSC §1001.075, and HSC Chapter 401.

§289.229. Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Radiation Therapy Simulation Systems, and Electronic Brachytherapy Devices.

(a) Purpose. This section establishes the following requirements for using accelerators, therapeutic radiation machines, radiation therapy simulation systems, and electronic brachytherapy (EBT) devices.

(1) Requirements for the registration of a person using radiation machines used in healing arts.

(A) A person must not use radiation machines except as authorized in a certificate of registration issued by the Texas Department of State Health Services (department) as specified in the requirements of this section.

(B) A person who receives, possesses, uses, owns, or acquires radiation machines before receiving a certificate of registration is subject to the requirements of this chapter.

(2) Requirements are intended to control receipt, possession, use, and transfer of radiation machines by any person so the total radiation dose to an individual, excluding background radiation, does not exceed the standards for protection against radiation prescribed in this section. This section does not limit actions necessary to protect public health and safety during an emergency.

(3) Requirements for specific record keeping and general provisions of records and reports.

(b) Scope.

(1) This section applies to a person who receives, possesses, uses, acquires, or transfers an accelerator used in industrial operations and research and development, therapeutic radiation machines, radiation therapy simulation systems, and EBT devices used in the healing arts. The registrant is responsible for the administrative control and for directing the use of the accelerators, other therapeutic radiation machines, radiation therapy simulation systems, and EBT devices.

(2) The requirements of this section are in addition to and not in substitution for other applicable requirements of:

(A) §289.203 of this chapter (relating to Notices, Instructions, and Reports to Workers; Inspections);

(B) §289.204 of this chapter (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(C) §289.205 of this chapter (relating to Hearing and Enforcement Procedures);

(D) §289.226 of this subchapter [~~chapter~~] (relating to Registration of Radiation Machine Use and Services);

(E) §289.227 of this subchapter [~~chapter~~] (relating to Use of Radiation Machines in the Healing Arts); and

(F) §289.231 of this subchapter [~~chapter~~] (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(3) Registrants engaged in industrial radiographic operations are subject to the requirements of §289.255 of this chapter (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(4) Registrants engaged in veterinary accelerator operations are subject to the requirements of §289.233 of this subchapter [~~chapter~~] (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine).

(5) An entity, defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as a "covered entity" under 45 Code of Federal Regulations (CFR) Parts 160 and 164 may be subject to privacy standards governing how information identifying a patient can be used and disclosed. Failure to follow HIPAA requirements may result in the department referring a potential violation to the United States Department of Health and Human Services.

(c) Prohibitions.

(1) The department prohibits the use of accelerators, therapeutic radiation machines, radiation therapy simulation systems, or EBT devices posing a significant threat or danger to occupational and public health and safety, as specified in §289.205 [~~and §289.231~~] of this chapter and §289.231 of this subchapter.

(2) An individual must not be exposed to the useful beam of accelerators, therapeutic radiation machines, radiation therapy simulation systems, or EBT devices except for healing arts purposes and unless a physician of the healing arts has authorized such exposure. This provision specifically prohibits the deliberate exposure of an individual for training, demonstration, or other non-healing arts purposes.

(3) Research and development using radiation machines on humans is prohibited unless approved by an Institutional Review Board (IRB) as required by 45 CFR Part 46 and 21 CFR Part 56. The IRB must include at least one physician of the healing arts to direct any use of radiation as specified in §289.231(b) of this subchapter [~~chapter~~].

(4) Remote operation of radiation machines on humans is prohibited.

(5) Use of therapeutic radiation machines in the healing arts without the supervision of a physician of the healing arts is prohibited.

(6) Use of EBT devices in the healing arts without the supervision of a certified physician, as defined in subsection (e)(12) of this section, is prohibited.

(d) Exemptions. An individual who is a sole physician, sole operator, and the only occupationally exposed individual is exempt from the following requirements:

(1) §289.203(b) and (c) of this chapter; and

(2) subsection (h)(1)(G) of this section.

(e) Definitions. The [~~When used in this section, the~~] following [~~words and~~] terms in this section have the following meanings [~~meaning~~] unless the context clearly indicates otherwise.

(1) Absorbed dose (D)--The mean energy imparted by ionizing radiation to matter. Absorbed dose is determined as the quotient of dE by dM, where dE is the mean energy imparted by ionizing radiation to the mass dM. The System International (SI) unit of absorbed dose is joule per kilogram and the special name of the unit of absorbed dose is gray (Gy). The previously used special unit of absorbed dose (rad) is replaced by gray.

(2) Absorbed dose rate--Absorbed dose per unit time for machines with timers, or dose monitor unit per unit time for linear accelerators.

(3) Accelerator beam quality--The type and penetrating power of the ionizing radiation produced for certain machine settings.

(4) Air kerma--The kinetic energy released in air by ionizing radiation. Kerma is the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is Gy.

(5) Barrier--See definition for "protective barrier" in paragraph (64) of this subsection [~~protective barrier~~].

(6) Beam axis--The axis of rotation of the beam limiting device.

(7) Beam-flattening filter--See definition for "field-flattening filter" in paragraph (27) of this subsection [~~field-flattening filter~~].

(8) Beam-limiting device--A field-defining collimator, integral to the therapeutic radiation machine, which provides a means to restrict the dimensions of the useful beam.

(9) Beam monitoring system--A system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

(10) Beam quality--The penetrating power of the x-ray beam identified numerically by the half-value layer and influenced by kilovolt peak (kVp) and filtration.

(11) Central axis of the beam--An imaginary line passing through the center of the useful beam and the center of the plane figure formed by the edge of the first beam-limiting device.

(12) Certified physician--A physician licensed by the Texas Medical Board and certified in radiation oncology or therapeutic radiology.

(13) Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:
Figure: 25 TAC §289.229(e)(13) (No change.)

(14) Collimator--A device or mechanism by which the x-ray beam is restricted in size.

(15) Computed tomography (CT)--The production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(16) Continuous pressure type switch--A switch that can only power a device when the operator maintains continuous pressure on the switch.

(17) Control panel--The part of the radiation machine where the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors are located. For purposes of this section, console is an equivalent term.

(18) Conventional radiation therapy simulator--A radiation machine with radiographic or fluoroscopic capabilities uniquely designed for the direct purpose of simulating radiation therapy treatment ports.

(19) CT conditions of operation--All selectable parameters governing the operation of a CT x-ray system, including nominal tomographic section thickness, filtration, and the technique factors as defined in this subsection.

(20) CT radiation therapy simulator--CTs that interface with radiation therapy linear accelerators.

(21) Diaphragm--A device or mechanism by which the x-ray beam is restricted in size.

(22) Dose monitor unit (DMU)--A unit response from the beam monitoring system from which the absorbed dose can be calculated.

(23) Dosimetry system--An ion chamber used as a dosimeter for measurement of clinical photon and electron beams with calibration coefficients determined either in air or in water and traceable to a national primary standards dosimetry laboratory.

(24) Electronic brachytherapy--A method of radiation therapy using electrically generated x-rays to deliver a radiation dose at a distance of up to a few centimeters by intracavitary, intraluminal, or interstitial application, or by applications with the source in contact with the body surface or very close to the body surface.

(25) Electronic brachytherapy (EBT) device--The system used to produce and deliver therapeutic radiation, including the x-ray tube, the control mechanism, the cooling system, and the power source.

(26) External beam radiation therapy--Therapeutic irradiation in which the source of radiation is at a distance from the body.

(27) Field-flattening filter--A filter used to homogenize the absorbed dose rate over the radiation field.

(28) Field size--The dimensions along the major axes of an area in a plane perpendicular to the central axis of the beam at the nominal treatment or examination source-to-image distance and defined by the intersection of the major axes and the 50 percent isodose line.

(29) Focal spot--The area projected on the anode of the x-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates.

(30) Gantry--The part of the radiation therapy system that supports and allows possible movements of the radiation head about the center of rotation.

(31) Gray (Gy)--The SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule per kilogram. The previous unit of absorbed dose (rad) is replaced by the gray (1 Gy = 100 rad).

(32) Half-value layer (HVL)--The thickness of a specified material that attenuates x-radiation or gamma radiation to the extent the exposure rate (air kerma rate) or absorbed dose rate is reduced to one-half of the value measured without the material at the same point.

(33) Healing arts--Any treatment, operation, diagnosis, prescription, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(34) Image receptor--Any device that transforms incident x-ray photons either into a visible image or into another form made into a visible image by further transformations.

(35) Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct a periodic review of biomedical research involving human subjects.

(36) Image-Guided Radiation Therapy (IGRT)--Radiation therapy employing advanced imaging to maximize accuracy and precision throughout the entire process of treatment delivery with the goal of optimizing the accuracy and reliability of radiation therapy to the target while minimizing dose to normal tissues.

(37) Intensity-Modulated Radiation Therapy (IMRT)--A technology for delivering highly conformal external beam radiation to a well-defined treatment volume with radiation beams whose intensity varies across the beam.

(38) Interlock--A device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

(39) Interruption of irradiation--The stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

(40) Irradiation--The exposure of a living being or matter to ionizing radiation.

(41) Irradiation filter (filter)--Radiation absorbers or beam-modifying devices placed in the useful high-energy beam to shape the beam and optimize the target volume dose distribution in therapeutic radiation machines subject to subsection (h) of this section. Irradiation filter types are defined as follows.

(A) Dynamic or virtual wedge--A wedge produced by computer-controlled movement of one or more collimator jaws. The wedge generates a spatial dose distribution similar to a physical wedge. The wedge-shaped graduated attenuation across the radiation beam can produce symmetric or asymmetric radiation fields.

(B) Multileaf collimator (MLC) wedge filter--A beam-limiting device made of individual "leaves" of a high atomic numbered material, usually tungsten, that can move independently in and out of the path of a radiotherapy beam to shape and vary its intensity.

(C) Physical wedge filter--Physical wedges are made of metallic material and are manually placed in the useful radiation beam. The wedges are shaped in such a way as to produce graduated attenuation across the radiation field.

(D) Stereotactic radiosurgery (SRS) filter--A precise form of target localization delivering radiation through narrow circular cones or circular collimator tubes with lenses or computer leaf-driven systems enabling more precise beam filtering or shaping for complex radiation fields.

(42) Isocenter--The center of the sphere through which the useful beam axis passes while the gantry moves through its full range of motions.

(43) Kilovolt (kV) (kilo electron volt (keV))--The energy given to a particle with one electron charge when passing through a potential difference of one thousand volts in a vacuum. (Note: current convention is to use kV for photons and keV for electrons.)

(44) Kilovolt peak (kVp)--See definition for "peak tube potential" in paragraph (56) of the subsection [~~peak tube potential~~].

(45) Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(46) Leakage radiation--Radiation emanating from the source assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(47) Leakage technique factors--The technique factors associated with the source assembly used when measuring leakage radiation.

(48) Licensed medical physicist--An individual holding a current Texas license under the Medical Physics Practice Act, Texas Occupations Code Chapter 602.

(49) Light field--The area illuminated by light, simulating the radiation field.

(50) Medical event--An event meeting the criteria specified in subsection (i) of this section.

(51) Megavolt (MV) (megaelectron volt (MeV))--The energy given to a particle with one electron charge when passing through a potential difference of one million volts in a vacuum.

(52) Mobile EBT device--An EBT device transported from one address to be used at another address.

(53) Moving beam radiation therapy--Radiation therapy with any planned displacement of radiation field or patient relative to each other, or with any planned change of absorbed dose distribution. It includes arc, skip, conformal, intensity modulation, and rotational therapy.

(54) Nominal treatment distance--The following nominal treatment distances apply: [:]

(A) for [~~For~~] electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam, as specified by the manufacturer; or [:]

(B) for [~~For~~] x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam to the isocenter. For non-isocentric equipment, this distance is specified by the manufacturer.

(55) Output--The exposure rate (air kerma rate), dose rate, or a quantity related to these rates from a therapeutic radiation machine.

(56) Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during exposure.

(57) Phantom--An object behaving in essentially the same manner as tissue, with respect to absorption or scattering of the ionizing radiation in question.

(58) Physician--An individual licensed by the Texas Medical Board to practice medicine under Texas Occupations Code Chapter 155.

(59) Port film--An x-ray exposure made with a radiation therapy system to visualize a patient's treatment area using radiographic film.

(60) Portable shielding--Moveable shielding placed in the primary or secondary beam to reduce radiation exposure to the patient, occupational worker, or a member of the public. The shielding can be easily moved to position using mobility devices or by hand.

(61) Prescribed dose--The total dose and dose per fraction as documented in the written directive. The prescribed dose is an estimation from measured data from a specified therapeutic machine using clinically acceptable and historically consistent assumptions for the treatment technique and calculations previously used for patients treated with the same clinical technique.

(62) Primary dose monitoring system--A system monitoring the useful beam during irradiation and terminating irradiation when a preselected number of monitor units are delivered.

(63) Protective apron--An apron made of radiation-absorbing materials used to reduce radiation exposure.

(64) Protective barrier--A barrier of radiation-absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows.

(A) Primary protective barrier. A barrier sufficient to attenuate the useful beam to the required degree.

(B) Secondary protective barrier. A barrier sufficient to attenuate the scatter radiation to the required degree.

(65) Protective glove--A glove made of radiation-absorbing materials used to reduce radiation exposure.

(66) Quality assurance (QA) check--A test or analysis performed at a specified interval to verify the consistent output of radiation equipment.

(67) Radiation detector--A device providing, by either direct or indirect means, a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(68) Radiation field--See definition for "useful beam" in paragraph (89) of this subsection [~~useful beam~~].

(69) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(70) Radiation therapy simulation system--An x-ray system intended for localizing and confirming the volume to be irradiated during radiation treatment and confirming the position and size of the therapeutic irradiation field.

(71) Radiation therapy system--A system utilizing machine-produced, prescribed doses of ionizing radiation for treatment.

(72) Radiation treatment head--The structure from which the useful beam emerges.

(73) Remote operation--Exposure of a patient to ionizing radiation initiated by an operator from a remote location rather than at the healthcare facility where the radiation-producing machine is located.

(74) [~~(73)~~] Scan--The complete process of collecting x-ray transmission data to produce one or more tomograms.

(75) [~~(74)~~] Scan increment--The amount of relative displacement of the patient with respect to the CT x-ray system between successive scans measured along the direction of such displacement.

(76) [~~(75)~~] Scan sequence--A preselected set of two or more scans performed consecutively under preselected CT conditions of operation.

(77) [~~(76)~~] Scan time--The period between the beginning and end of x-ray transmission data accumulation for a single scan.

(78) [~~(77)~~] Scattered radiation--Secondary radiation occurring when the beam intercepts an object causing the x-rays to be scattered.

(79) [~~(78)~~] Secondary dose monitoring system--A system terminating irradiation in the event of failure of the primary dose monitoring system.

(80) [~~(79)~~] Shutter--A device attached to the tube housing assembly capable of completely intercepting the useful beam and with a lead equivalency greater than or equal to the tube housing assembly.

(81) [~~(80)~~] Source-to-skin distance (SSD)--The distance from the source to the skin of the patient.

(82) [~~(81)~~] Stationary beam therapy--Radiation therapy without displacement of one or more mechanical axes relative to the patient during irradiation.

(83) [~~(82)~~] Supervision--Delegating the task of applying radiation to a person by a physician. The physician can only delegate tasks to an individual certified under the Medical Radiologic Technologist Certification Act, Texas Occupations Code Chapter 601. The physician assumes full responsibility for these tasks and ensures the tasks are administered correctly.

(84) [~~(83)~~] Target--The part of an x-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation.

(85) [~~(84)~~] Termination of irradiation--The stopping of irradiation in a fashion not permitting the continuation of irradiation without resetting operating conditions at the control panel.

(86) [~~(85)~~] Therapeutic radiation machine--X-ray, particle, or electron-producing equipment designed and used for external beam radiation therapy.

(87) [~~(86)~~] Traceable to a national standard--This indicates a quantity or a measurement has been compared to a national standard, for example the National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(88) [~~(87)~~] Tube housing assembly--The tube housing with tube installed.

(89) [~~(88)~~] Useful beam--Radiation passing through the window, aperture, cone, or other collimating device of the source housing. Also referred to as the primary beam.

(90) [~~(89)~~] Virtual simulation--A process using the import, manipulation, display, and storage of electronic patient images to create linear accelerator treatment ports.

(91) [~~(90)~~] Virtual source--A point from which radiation appears to originate.

(92) [~~(91)~~] Wedge transmission factor--The ratio of doses, with and without the wedge, at a point along the central axis of the useful beam that compensates for the decrease in dose produced by the filter.

(93) [~~(92)~~] Written directive--An order in writing for the administration of radiation to a specific patient as specified in subsection (h)(1)(F)(ii) of this section.

(f) Accelerators used for research and development or industrial operations.

(1) Registration. Each person possessing an accelerator for non-human use must apply for and receive a certificate of registration from the department before beginning use of the accelerator. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the department as specified in §289.226(i)(1) of this subchapter [~~chapter~~].

(2) Facility requirements.

(A) Each accelerator facility must be provided with primary and secondary barriers necessary to assure compliance with §289.231(m) and (o) of this subchapter [~~chapter~~].

(B) A radiation survey must be conducted when the accelerator is registered and capable of producing radiation to determine compliance with §289.231(m) and (o) of this subchapter [~~chapter~~].

(C) The registrant must maintain a copy of the initial and all subsequent vault shielding survey reports for inspection by the department as specified in subsection (l) of this section. Vault surveys must be performed:

(i) on all new and existing facilities not previously surveyed by, or under the direction of, the registrant; and

(ii) upon installation[~~, replacement,~~] or upgrade to a higher energy accelerator.

(D) [~~The registrant must maintain a copy of the initial survey report for inspection by the agency in accordance with subsection (l) of this section.~~] A completed vault shielding survey report must include:

(i) a diagram of the facility detailing building structures and the position of the accelerator, control panel, and associated equipment;

(ii) a description of the accelerator, including the manufacturer, model and serial number, beam type, and beam energy;

(iii) a description of the instrumentation used to determine radiation measurements, including the date and source of the most recent calibration for each instrument used;

(iv) conditions under which radiation measurements were taken;

(v) survey data, including:

(I) projected annual total effective dose equivalent (TEDE) in areas adjacent to the accelerator; and

(II) a description of workload, use, and occupancy factors employed in determining the projected annual TEDE; and

(vi) documentation of all instances where the facility violates this chapter's applicable requirements. Any deficiencies detected during the survey must be corrected before using the accelerator.

(3) Safety requirements.

(A) Interlock systems, including inherent, add-on, and aftermarket devices attaching to the accelerator, must comply with the following requirements.

(i) Instrumentation, readouts, and controls in the accelerator console are clearly identified.

(ii) Each entrance into a target room or other high radiation area is provided with a safety interlock terminating the useful beam under conditions of barrier penetration.

(iii) When the production of radiation has been interrupted, it is only possible to resume operation of the accelerator by manually resetting the interlock at the console.

(iv) Each safety interlock is on an electrical circuit allowing the interlock to operate independently of all other safety interlocks.

(v) All safety interlocks are designed so any defect or component failure in the interlock system prevents operating the accelerator.

(vi) A scram button or other emergency power cut-off switch is labeled. The scram button or cut-off switch includes a manual reset so the accelerator cannot be restarted from the accelerator console without resetting the cut-off switch.

(vii) The safety interlock system includes a visible or audible alarm indicating when any interlock has been activated.

(viii) All interlocks and visible or audible alarms are tested for proper operation at intervals meeting or exceeding nationally recognized, published guidelines from a professional body with expertise in accelerator radiation technologies, or manufacturer recommendations.

(ix) If an interlock or alarm is operating improperly, it is immediately labeled as defective and repaired within seven calendar days.

(x) Records of tests and repairs required by this paragraph are made and maintained as specified in subsection (l) of this section for inspection by the department.

(B) Each registrant must develop, implement, and maintain written operating and safety procedures (OSP) as specified in subsection (h)(1)(G) of this section.

(C) The registrant must ensure radiation measurements are performed with a calibrated dosimetry system. The dosimetry system calibration must be traceable to a national standard. Instruments and equipment must be calibrated at an interval not to exceed 24 months. Each accelerator facility must have appropriate portable monitoring equipment available that is operable and calibrated for the radiation produced at the facility.

(D) A radiation protection survey must be performed and the results recorded when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas.

(E) For portable or mobile accelerators, such as neutron generators used at temporary job sites where permanent shielding is not available, radiation protection must be provided by temporary shielding or by providing an adequate exclusion area around the accelerator while it is in use.

(F) Records of calibration and survey results made as specified in subparagraphs (C) and (D) of this paragraph must be maintained according to subsection (l) of this section.

(G) The registrant must perform radiation surveys and contamination smears before the transfer or disposal of an accelerator operating at or above 10 MeV. The survey must be documented and maintained by the registrant for inspection by the department as specified in subsection (l) of this section.

(H) The registrant must retain records of receipt, transfer, and disposal of all radiation machines specific to each authorized

use location. The records must be maintained by the registrant for inspection by the department as specified in subsection (l) of this section. The records must include the:

(i) date;

(ii) manufacturer name;

(iii) model;

(iv) serial number from the control panel or console of the radiation machine; and

(v) name of the individual making the record.

(4) Training requirements for operators.

(A) An individual must not operate an accelerator unless the individual has received instruction in and demonstrated competence with the following:

(i) OSP as specified in paragraph (3)(B) of this subsection;

(ii) radiation warning and safety devices incorporated into the equipment and in the room;

(iii) identification of radiation hazards associated with the use of the equipment; and

(iv) procedures for reporting a medical event or an actual or suspected exposure to the operator.

(B) Records of the training specified in subparagraph (A) of this paragraph must be made and maintained for department inspection as specified in subsection (l) of this section.

(g) Requirements for an accelerator used in industrial radiography. In addition to the requirements in subsections (f)(1), (f)(2), and (f)(3)(C) - (H) of this section, accelerators used for industrial radiography must meet the applicable requirements of §289.255 of this chapter.

(h) Requirements for therapeutic radiation machines, radiation therapy simulation systems used in the healing arts, and EBT devices.

(1) General requirements.

(A) Each person possessing a therapeutic radiation machine capable of operating at or above 1 MeV or an EBT device must apply for and receive a certificate of registration from the department before using the accelerator for human use. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the department.

(B) A person possessing a radiation therapy simulation system or a therapeutic radiation machine capable of operating below 1 MeV must apply for a certificate of registration within 30 days after energizing the equipment.

(C) An individual who operates a radiation machine for human use must meet the appropriate credentialing requirements as specified in the Medical Radiologic Technologist Certification Act, Texas Occupations Code Chapter 601. Copies of the credentialing document must be maintained at the location where the individual is working. A copy of the credentialing document must be maintained by the registrant for inspection by the department as specified in subsection (l) of this section.

(D) The EBT registration requires the physician to be:

(i) licensed by the Texas Medical Board; and

(ii) certified in:

(I) radiation oncology or therapeutic radiology by the American Board of Radiology; or

(II) radiation oncology by the American Osteopathic Board of Radiology.

(E) The registrant must ensure an operator of an EBT device completes device-specific training and maintains a record of each individual's training as specified in subsection (l) of this section. The device-specific training must include:

(i) completing a training program provided by the manufacturer; or

(ii) training substantially equivalent to the manufacturer's training program from a certified physician or a licensed medical physicist trained to use the device.

(F) Each facility must develop a written QA program or an electronic reporting system. The QA program must be implemented to minimize deviations from facility procedures and to document preventative measures taken before serious patient injury or therapeutic misadministration.

(i) The QA program must include the following topics:

(I) treatment planning and patient simulation;

(II) charting and documenting treatment field parameters;

(III) dose calculation and review procedures;

(IV) review of daily treatment records; and

(V) for EBT devices, verification of catheter placement and device exchange procedures.

(ii) A written directive must be prepared before administration of a therapeutic radiation dose except where a delay in providing a written directive would jeopardize the patient's health. If an oral directive must be made, the information contained in the oral directive must be documented immediately in the patient's record. A written directive must be prepared within 24 hours of the oral directive.

(iii) A written directive changing an existing written directive for any therapeutic radiation procedure is only acceptable if the revision is dated and signed by a certified physician before the administration of the therapeutic dose, or the next fractional dose.

(iv) Deviations from the prescribed treatment, from the facility's QA program, or from the OSP must be investigated and brought to the attention of the certified physician or licensed medical physicist, and the radiation safety officer (RSO).

(v) The patient's identity must be verified by more than one method as the individual named in the written directive before administration.

(vi) The discovery of each medical event must be reported as specified in subsections (i) and (j) of this section.

(vii) The review of the QA program must include all the deviations from the prescribed treatment and must be conducted at intervals not to exceed 14 months. A signed record of each dated review must be maintained for inspection by the department as specified in subsection (l) of this section and must include evaluations and findings of the review.

(G) Written OSP must be developed by a licensed medical physicist with a specialty in therapeutic radiological physics and must include any restrictions required for the safe operation of each

therapeutic radiation machine. These procedures must be available in the control area of the therapeutic radiation machine, radiation therapy simulation system, or EBT device. The registrant must maintain records of OSP as specified in subsection (l) of this section for inspection by the department. The operator must be able to demonstrate familiarity with these procedures. The OSP must address the following requirements:

(i) therapeutic radiation machines must not be used for irradiation of a patient unless full calibration measurements and QA checks have been completed;

(ii) therapeutic radiation machines must not be used in the administration of radiation therapy if a QA check indicates a significant change in the operating characteristics of a system as specified in the written procedures;

(iii) therapeutic radiation machines must not be left unattended unless secured by a locking device, or computerized password system, preventing unauthorized use;

(iv) mechanical supporting or restraining devices must be used when there is a need to immobilize a patient or port film for radiation therapy;

(v) no individual, other than the patient, is allowed in the treatment room during exposures from therapeutic radiation machines operating above 150 kV;

(vi) at energies less than or equal to 150 kV, any individual in the treatment room, other than the patient, must be protected by a barrier sufficient to meet the requirements of §289.231(m) and (o) of this subchapter [~~chapter~~];

(vii) a technique chart for radiation therapy simulation systems must be used as specified in paragraph (5)(A)(i) of this subsection;

(viii) occupational and public radiation dose must be controlled as specified in §289.231(m) and (o) of this subchapter [~~chapter~~];

(ix) occupational dose must be monitored as specified in §289.231(n) of this subchapter [~~chapter~~];

(x) protective devices must be used for radiation therapy simulation systems as specified in paragraph (5)(A)(iii) of this subsection;

(xi) operators of radiation machines must be credentialled as specified in subparagraph (C) of this paragraph;

(xii) film processing program for conventional radiation therapy simulation systems must be performed as specified in paragraph (5)(E)(i) of this subsection;

(xiii) procedures for restriction and alignment of the beam for conventional radiation therapy simulation systems as specified in paragraph (5)(F)(iii) of this subsection;

(xiv) methods utilized for testing interlocks, entrance controls, and alarm systems;

(xv) notifications and reports must be provided to individuals as specified in §289.203(d) of this chapter; and

(xvi) notices to workers must be posted as specified in §289.203(b) of this chapter.

(H) A registrant with equipment granted variances by the United States Food and Drug Administration (FDA) to 21 CFR Part 1020 must maintain copies of those variances at authorized use locations as specified in subsection (l) of this section.

(I) The registrant must perform radiation surveys and contamination smears before the transfer or disposal of an accelerator operating at or above 10 MeV. Surveys must be documented and maintained by the registrant for inspection by the department as specified in subsection (l) of this section.

(J) Where applicable, the licensed medical physicist must perform acceptance testing on the treatment planning system of therapy-related computer systems as specified in protocols accepted by nationally recognized, published guidelines, from a professional body with expertise in the use of therapeutic radiation technologies. In the absence of such a published protocol, the manufacturer's current protocol must be followed.

(2) Therapeutic radiation machines capable of operating at energies below 1 MeV.

(A) Equipment requirements.

(i) When the tube is operated at its leakage technique factors, the leakage radiation must not exceed the values specified at the distance stated for the classification of the radiation machine system shown in the following Table I. The leakage technique factors are the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.
Figure: 25 TAC §289.229(h)(2)(A)(i) (No change.)

(ii) Permanent fixed diaphragms or cones used for limiting the useful beam must provide the same or a higher degree of protection as required for the tube housing assembly.

(iii) Removable and adjustable beam-limiting devices must meet the following requirements.

(I) Removable beam-limiting devices must, for the portion of the useful beam to be blocked by these devices, transmit not more than 1 percent of the useful beam at the maximum kVp and maximum treatment filter. This requirement does not apply to auxiliary blocks or materials placed in the x-ray field to shape the useful beam to the individual patient.

(II) Adjustable beam-limiting devices must, for the portion of the x-ray beam to be blocked by these devices, transmit not more than 5 percent of the useful beam at the maximum kVp and maximum treatment filter.

(III) Adjustable beam-limiting devices must meet the requirements of subclause (I) of this clause.

(iv) The filter system must be designed so:

(I) the filters cannot be accidentally displaced at any possible tube orientation;

(II) an interlock system prevents irradiation if the proper filter is not in place;

(III) the air kerma rate escaping from the filter slot must not exceed 1 centigray/hour (cGy/hr) at 1 meter (m) under any operating conditions; and

(IV) each filter is marked as to its material of construction and its thickness. For wedge filters, the wedge angle must appear on the wedge or wedge tray.

(v) The tube housing assembly must be capable of being immobilized for stationary treatments.

(vi) The tube housing assembly must be marked so it is possible to determine the location of the focal spot to within 5 millimeters (mm), and such marking must be readily accessible for use during calibration procedures.

(vii) The contact therapy tube housing assembly must have a removable shield of at least 0.5 mm lead equivalency at 100 kVp capable of being positioned over the entire useful beam exit port during periods when the beam is not in use.

(viii) The timer must:

(I) have a display provided at the treatment control panel and a pre-set time selector;

(II) activate with the production of radiation and retain its reading after irradiation is interrupted;

(III) be reset to zero after irradiation is terminated and before irradiation can be re-initiated;

(IV) terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation;

(V) permit selection of exposure times as short as 1 second;

(VI) not permit exposure if set at zero;

(VII) not activate until the shutter is opened when irradiation is controlled by a shutter mechanism unless calibration includes a timer factor to compensate for mechanical lag; and

(VIII) be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(ix) The control panel, in addition to the displays required in clause (viii)(I) of this subparagraph, must have the following:

(I) an indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(II) an indication of whether x-rays are being produced;

(III) means for indicating x-ray tube potential and current;

(IV) means for terminating an exposure at any time;

(V) a locking device preventing unauthorized use of the therapeutic radiation system (a computerized password system also constitutes a locking device);

(VI) a positive display of specific filters in the beam; and

(VII) emergency buttons or switches with the intended functions clearly labeled [~~as to their functions~~].

(x) There must be a means of initially determining the SSD to within 1 centimeter (cm) and of reproducing this measurement to within 2 mm.

(xi) Unless it is possible to bring the radiation output to the prescribed exposure parameters within 5 seconds, the beam must be attenuated by a shutter having a lead equivalency not less than that of the tube housing assembly. After the unit is at operating parameters, the shutter must be controlled electrically by the operator from the control panel. An indication of shutter position must appear at the control panel.

(xii) Each therapeutic radiation system equipped with a beryllium or other low-filtration window must be clearly labeled on the tube housing assembly and at the control panel.

(B) Facility requirements for therapeutic radiation systems capable of operating above 50 kVp.

(i) Provision must be made for continuous two-way aural communication between the patient and the operator at the control panel.

(ii) Windows, mirrors, closed-circuit television, or an equivalent system must be provided to permit continuous observation of the patient during irradiation and be located so the operator can observe the patient from the control panel.

(I) If the viewing system described in clause (ii) of this subparagraph fails or is inoperative, treatment must not be performed with the unit until the system is restored.

(II) If a facility has a primary viewing system by electronic means and an alternate viewing system, and both viewing systems described in clause (ii) of this subparagraph fail or are inoperative, treatment must not be performed with the unit until one of the systems is restored.

(C) Additional facility requirements for therapeutic radiation systems capable of operation above 150 kVp.

(i) Each installation must be provided with primary and secondary barriers as necessary to assure compliance with §289.231(m) and (o) of this subchapter [~~chapter~~]. All protective barriers must be fixed except for entrance doors or beam interceptors.

(ii) The control panel must be located outside the treatment room or in an enclosed booth inside the room.

(iii) Interlocks must be provided to ensure all entrance doors are closed, including doors to any interior booths, before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it must not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel. When any door is opened while the x-ray tube is activated, the exposure at a distance of 1 m from the source must be reduced to less than 1 milligray per hour (mGy/hr) (100 millirad per hour (mrad/hr)).

(D) Surveys, calibrations, and QA checks.

(i) Surveys must be performed as follows.

(I) All new and existing facilities not previously surveyed must have an initial shielding survey made by a licensed medical physicist, with a specialty in therapeutic radiological physics or medical health physics [~~as authorized by 22 Texas Administrative Code (TAC) §160.17 (relating to Medical Physicist Scope of Practice)~~], who must provide a written report of the survey to the registrant. Additional surveys must be done after any change in the facility, facility design, or equipment that might cause a significant increase in radiation hazard.

(II) The registrant must maintain a copy of the initial survey report and all subsequent survey reports required by subclause (I) of this clause as specified in subsection (l) of this section for inspection by the department.

(III) The survey report must indicate all instances where the installation violates this chapter's applicable requirements.

(ii) Full calibrations must be performed as follows.

(I) The calibration of a therapeutic radiation system must be performed at intervals not to exceed 12 months and after any change or replacement of components that could cause a change in the radiation output. The calibrations must ensure the dose at a refer-

ence point in a water or plastic phantom can be calculated to within an uncertainty of 5 percent.

(II) The calibration of the radiation output of the therapeutic radiation system is performed by a licensed medical physicist with a specialty in therapeutic radiological physics, physically present at the facility during such calibration.

(III) The calibration of the therapeutic radiation system includes:

(-a-) verification the radiation therapy system is operating in compliance with the design specifications;

(-b-) HVL for each kV setting and filter combination used;

(-c-) the exposure rates (air kerma rates) as a function of field size, technique factors, filter, and treatment distance used; and

(-d-) the degree of congruence between the radiation field and the field indicated by the localizing device, if such device is present, which must be within 5 mm for any field edge.

(IV) Calibration measurements of the radiation output of a therapeutic radiation system must be performed with a calibrated dosimetry system. Calibration of the dosimetry system must be performed and completed at intervals not to exceed 24 months and traceable to a national standard.

(V) Records of calibration measurements specified in this clause must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(VI) A copy of the latest calibrated absorbed dose rate measured on a particular therapeutic radiation system must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(iii) QA checks must be performed on therapeutic radiation systems capable of operation at greater than 150 kVp. Such measurements must meet the following requirements.

(I) The QA check procedures must be in writing or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) If a licensed medical physicist does not perform the QA check measurements: [,]

(-a-) the results of the QA check measurements must be reviewed by a licensed medical physicist with a specialty in therapeutic radiological physics within five treatment days, and a record made of the review; and [.]

(-b-) if [If] the output varies by more than 5 percent from the expected value, a licensed medical physicist with a specialty in therapeutic radiological physics must be notified immediately.

(III) The written QA check procedures must specify the testing or measurement frequency and state that the QA check must be performed during the calibration specified in clause (ii) of this subparagraph. The acceptable tolerance for each parameter measured when compared to the value for that parameter determined in the calibration specified in clause (ii) of this subparagraph must be stated.

(IV) The written QA check procedures must include special operating instructions required to be carried out whenever a parameter in subclause (III) of this clause exceeds an acceptable tolerance.

(V) Whenever a QA check indicates a significant change in the operating characteristics of a system, as specified in the procedures, the system must be recalibrated, as required in clause (ii) of this subparagraph.

(VI) Records of written QA checks and any necessary corrective actions must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department. A copy of the most recent QA check must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(VII) QA checks must be obtained using a system satisfying the requirements of clause (ii)(IV) of this subparagraph.

(iv) All testing reports must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(3) Therapeutic radiation machines capable of operating at energies of 1 MeV and above.

(A) Equipment requirements.

(i) For operating conditions producing maximum leakage radiation, the absorbed dose in rads (mGy) due to leakage radiation (including x-rays, electrons, and neutrons) must not exceed 0.1 percent of the maximum absorbed dose in rads (mGy) of the unattenuated useful beam. The absorbed dose for this leakage radiation requirement must be measured at any point in a circular plane of 2 m radius centered on and perpendicular to the central axis of the beam at the isocenter or nominal treatment distance and outside the maximum useful beam size. The unattenuated useful beam must be measured at the point of intersection of the central axis of the beam and the plane surface.

(I) Measurements excluding those for neutrons must be averaged over an area up to, but not exceeding, 100 square centimeters (cm^2) at the positions specified.

(II) Measurements of the portion of the leakage radiation dose contributed by neutrons must be averaged over an area up to, but not exceeding, 200 cm^2.

(III) For each system, the registrant must determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified for the specified operating conditions.

(IV) Records on leakage radiation measurements must be maintained as specified in subsection (l) of this section for inspection by the department.

(ii) Irradiation filters.

(I) Dynamic or virtual wedge filter.

(-a-) An interlock system must be provided to prevent irradiation if any virtual or dynamic wedge selected in the treatment room does not agree with the virtual or dynamic wedge selection and operation carried out at the treatment console.

(-b-) The dose distribution selected must include:

(-1-) beam energy;

(-2-) field size; and

(-3-) wedge angle.

(-c-) A virtual wedge transmission factor must be established and utilized.

(II) Multileaf collimator (MLC) filter.

(-a-) An interlock system must be provided to prevent irradiation if the spatial dose distribution selected in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(-b-) The distribution selected must include:

(-1-) beam energy; and

(-2-) MLC selection.

(III) Stereotactic radiosurgery (SRS) filter.

(-a-) An interlock system must be provided to prevent irradiation if the spatial dose distribution selected in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(-b-) The distribution selected must include:

(-1-) beam energy;

(-2-) SRS cone; or

(-3-) MLC selection.

(-c-) A virtual wedge transmission factor must be established and utilized.

(IV) Physical wedge filter.

(-a-) Each wedge filter removable from the system must be marked with an identification number.

(-b-) Documentation must be available at the console containing a description of the filter.

(-c-) The wedge angle must appear on the wedge or wedge tray (if permanently mounted to the tray).

(-d-) If the wedge or wedge tray is damaged, the wedge must be removed from clinical service.

(-e-) Irradiation must not be possible until a selection of a filter or a positive selection to use "no filter" has been made at the treatment console, either manually or automatically.

(-f-) A display must be provided at the treatment console showing the accelerator beam quality in use.

(-g-) An interlock system must be provided to prevent irradiation if any filter selection operation carried out in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(iii) Beam quality [~~Quality~~]. The registrant must determine data sufficient to assure the following beam quality requirements in tissue equivalent material are met.

(I) The absorbed dose resulting from x-rays in a useful electron beam at a point on the central axis of the beam 10 cm greater than the practical range of the electrons must not exceed the values stated in Table II. Linear interpolation must be used for values not stated.

Figure: 25 TAC §289.229(h)(3)(A)(iii)(I) (No change.)

(II) Compliance with subclause (I) of this clause must be determined using:

(-a-) a measurement within a tissue equivalent phantom with the incident surface of the phantom at the nominal treatment distance and normal to the central axis of the beam;

(-b-) a field size of 10 cm by 10 cm; and

(-c-) a phantom whose cross-sectional dimensions exceed the measurement radiation field by at least 5 cm and whose depth is sufficient to perform the required measurement.

(III) The absorbed dose at a surface located at the nominal treatment distance, at the point of intersection of that surface with the central axis of the useful beam during x-ray irradiation, must not exceed the limits stated in the following Table III. Linear interpolation must be used for values not stated.

Figure: 25 TAC §289.229(h)(3)(A)(iii)(III) (No change.)

(IV) Compliance with subclause (III) of this clause. After removing all beam-modifying devices capable of being removed without the use of tools, except for beam-scattering or beam-flattening filters, measurements must be determined using [~~by measurements~~]:

(-a-) [~~within a tissue equivalent phantom using~~] an instrument allowing extrapolation to the surface absorbed dose within a tissue equivalent phantom;

(-b-) [~~using~~] a phantom whose size and placement meet the requirements of subclause (II) of this clause; and

[~~(-c-) after removal of all beam-modifying devices capable of being removed without the use of tools, except for beam-scattering or beam-flattening filters; and~~]

(-c-) [~~(-d-)~~] [~~using~~] the largest field size available not exceeding 15 cm by 15 cm.

(iv) All therapeutic radiation systems must be provided with radiation detectors in the gantry head. These must include the following, as appropriate.

(I) At least two independent radiation detectors must be used. The detectors must be incorporated into two independent dose monitoring systems.

(II) The incorporated detector and monitoring system must meet the following requirements.

(-a-) Each detector must be removable only with tools and must be interlocked to prevent incorrect positioning.

(-b-) Each detector must form part of a dose monitoring system from whose readings in dose monitor units the absorbed dose at a reference point in the treatment volume can be calculated.

(-c-) Each dose monitoring system must be capable of independently monitoring, interrupting, and terminating irradiation.

(-d-) The design of the dose monitoring systems must ensure [~~assure~~] the malfunctioning of one system does not affect the correct functioning of the secondary system; and failure of any element common to both systems affecting the correct function of both systems must terminate irradiation.

(-e-) Each dose monitoring system must have a legible display at the treatment console. Each display must:

(-1-) maintain a reading until intentionally reset to zero;

(-2-) have only one scale and no scale multiplying factors;

(-3-) utilize a design so increasing dose is displayed by increasing numbers and if there is an overdosage of radiation, the absorbed dose may be accurately determined; and

(-4-) retain the dose monitoring information in at least one system for 15 minutes in the event of a power failure.

(v) For equipment inherently capable of producing useful beams with unintentional asymmetry exceeding 5 percent, the asymmetry of the radiation beam in two orthogonal directions must be monitored before the beam passes through the beam-limiting device. If the difference in dose rate between one region and another region symmetrically displaced from the central axis of the beam exceeds 5 percent of the central axis dose rate, an indication of this condition must be displayed at the console; and if this difference exceeds 10 percent of the central axis dose rate, the irradiation must be terminated.

(vi) Selection and display of dose monitor units must meet the following requirements: [.]

(I) irradiation [~~Irradiation~~] must not be possible until a selection of dose monitor units has been made at the treatment console; [.]

(II) the [~~The~~] preselected number of dose monitor units must be displayed at the treatment console until reset manually for the next irradiation; [.]

(III) after [~~After~~] termination of irradiation, it must be necessary to reset the dosimeter display to zero before subsequent treatment can be initiated; and [.]

(IV) after [~~After~~] termination of irradiation, the preselected dose monitor units must be reset manually before irradiation can be initiated.

(vii) Termination of irradiation by the dose monitoring system or systems during stationary beam therapy must meet the following requirements: [.]

(I) each [~~Each~~] primary system must terminate irradiation when the preselected number of dose monitor units has been detected by the system; [.]

(II) a [~~A~~] secondary dose monitoring system must be present, and the [. ~~The~~] system must be capable of terminating irradiation when not more than 10 percent or 25 dose monitoring units, whichever is smaller, above the preselected number of dose monitor units set at the console has been detected by the secondary dose monitoring system; and [.]

(III) an [~~An~~] indicator on the console must show which dose monitoring system has terminated irradiation.

(viii) A locking device must be provided in the system to prevent unauthorized use of the x-ray system. A computerized password system would also constitute a locking device.

(ix) It must be possible to interrupt irradiation and equipment movements at any time from the operator's position at the treatment console. Following an interruption, it must be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a preselected value during an interruption, irradiation and equipment movements must be automatically terminated.

(x) It must be possible to terminate irradiation and equipment movements or go from an interruption condition to termination conditions at any time from the operator's position at the treatment console.

(xi) Timers must meet the following requirements.

(I) A timer with a display is provided at the treatment console. The timer has a preset time selector and an elapsed time indicator.

(II) The timer is a cumulative timer activating with the production of radiation and retaining its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it is necessary to reset the elapsed time indicator to zero.

(III) After termination of irradiation and before irradiation can be reinitiated, the preset time selector is reset manually.

(IV) The timer terminates irradiation when a preselected time has elapsed if the dose monitoring systems have not previously terminated irradiation.

(xii) Equipment capable of producing more than one radiation type must meet the following additional requirements.

(I) Irradiation is not possible until a selection of radiation type has been made at the treatment console.

(II) An interlock system is provided to:

(-a-) ensure the equipment can emit only the radiation type selected;

(-b-) prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console;

(-c-) prevent irradiation with x-rays except to obtain a port film when electron applicators are fitted; and

(-d-) prevent irradiation with electrons when accessories specific for x-ray therapy are fitted.

(III) The radiation type selected is displayed at the treatment console before and during irradiation.

(xiii) Equipment capable of generating radiation beams of different energies must meet the following requirements.

(I) Irradiation is not possible until a selection of energy has been made at the treatment console.

(II) An interlock system is provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console.

(III) The nominal energy value selected is displayed at the treatment console before and during irradiation.

(xiv) Equipment capable of both stationary beam therapy and moving beam therapy must meet the following requirements.

(I) Irradiation is not possible until a selection of stationary beam therapy or moving beam therapy has been made at the treatment console.

(II) An interlock system is provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console.

(III) The selection of stationary or moving beam is displayed at the treatment console. An interlock system must be provided to ensure the equipment can only operate in the selected mode.

(IV) An interlock system is provided to terminate irradiation if movement of the gantry occurs during stationary beam therapy or stops during moving beam therapy unless such stoppage is a preplanned function.

(V) Moving beam therapy is controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement.

(-a-) An interlock system must be provided to terminate irradiation if the number of dose monitor units delivered in any 10 degrees of arc differs by more than 20 percent from the selected value.

(-b-) Where gantry angle terminates the irradiation in arc therapy, the dose monitor units must be within 5 percent from the value calculated from the absorbed dose per unit angle relationship.

(VI) Where the dose monitor system terminates the irradiation in moving beam therapy, the termination of irradiation must meet the requirements of clause (vii) of this subparagraph.

(xv) A system must be provided from whose readings the absorbed dose rate at a reference point in the treatment volume can be calculated. The radiation detectors specified in clause (iv) of this subparagraph may form part of this system. In addition, the dose monitor unit rate must be displayed at the treatment console. If the equipment can deliver, under any conditions, an absorbed dose rate at the nominal treatment distance more than twice the maximum value specified by the manufacturer for any machine parameters utilized, a device must be provided to terminate irradiation when the absorbed dose rate exceeds a value twice the specified maximum. The dose rate at which the irradiation will be terminated must be in a record maintained by the registrant as specified in subsection (l) of this section for department inspection.

(xvi) The registrant must determine, or obtain from the manufacturer, the location with reference to an accessible point on the gantry, of the x-ray target, or the virtual source of x-rays and the electron window, or the virtual source of electrons if the system has electron beam capabilities.

(xvii) Capabilities must be provided so all radiation safety interlocks can be checked for correct operation.

(B) Facility and shielding requirements.

(i) Each installation must be provided with primary and secondary barriers as are necessary to assure compliance with §289.231(m) and (o) of this subchapter [~~chapter~~].

(ii) All protective barriers must be fixed except for entrance doors or beam interceptors.

(iii) The console must be located outside the treatment room and all emergency buttons or switches must be clearly labeled as to the intended [~~their~~] functions.

(iv) Windows, mirrors, closed-circuit television, or an equivalent system must be provided to permit continuous observation of the patient following positioning and during irradiation and must be located so the operator can see the patient from the console.

(I) If the viewing system described in clause (iv) of this subparagraph fails or is inoperable, treatment must not be performed with the unit until the system is restored.

(II) In a facility with a primary viewing system by electronic means and an alternate viewing system, if both viewing systems described in clause (iv) of this subparagraph fail or are inoperative, treatment must not be performed with the unit until one of the systems is restored.

(v) Provision must be made for continuous two-way aural communication between the patient and the operator at the console independent of the accelerator. However, where excessive noise levels or treatment requirements make aural communication impractical, other methods of communication must be used. When this is the case, a description of the alternate method must be submitted to and approved by the department.

(vi) Treatment room entrances must be provided with a warning light in a readily observable position near the outside of all access doors to indicate when the useful beam is "on."

(vii) Interlocks must be provided to ensure all entrance doors are closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it must not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the console.

(C) Surveys, dose calibrations, QA checks, and operational requirements.

(i) Surveys must be performed as follows.

(I) All new and existing facilities not previously surveyed must have an initial vault shielding survey made by a licensed medical physicist, with a specialty in therapeutic radiological physics or medical health physics, [~~as authorized by~~ 22 ~~TAC §160.17~~] who must provide a written report of the survey to the registrant. The physicist who performs the survey must be an individual who:

(-a-) did not consult in the design of the therapeutic radiation machine installation; and [~~and;~~]

(-b-) is not employed by or within any corporation or partnership with the person who consulted in the design of the installation.

(II) The survey report must include:

(-a-) a diagram of the facility detailing building structures and the position of the console, therapeutic radiation machine, and associated equipment;

(-b-) a description of the therapeutic radiation system, including the manufacturer, model and serial number, beam type, and beam energy;

(-c-) a description of the instrumentation used to determine radiation measurements, including the date and source of the most recent calibration for each instrument used;

(-d-) conditions under which radiation measurements were taken; and

(-e-) survey data, including:

(-1-) projected annual TEDE in areas adjacent to the therapy room; and

(-2-) a description of workload, use, and occupancy factors employed in determining the projected annual TEDE.

(III) The registrant must maintain a copy of the survey report, and a copy of the survey report must be provided to the department within 30 days of completion of the survey. Records of the survey report must be maintained as specified in subsection (l) of this section for inspection by the department.

(IV) The survey report must include documentation of all instances where the installation is in violation of applicable regulations. Any deficiencies detected during the survey must be corrected before using the machine.

(V) In addition, such surveys must be done after any change in the facility or equipment that might cause a significant increase in radiation hazard.

(ii) Dose calibrations. Records of calibration measurements specified in subclause (I) of this clause and dosimetry system calibrations specified in subclause (III) of this clause must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department. A copy of the latest calibrated absorbed dose rate measured as specified in subclause (I) of this clause must be available at a designated area within the facility housing the radiation therapy system. Calibrations of therapeutic systems must be performed as follows.

(I) The calibration of systems subject to this subsection are performed as specified in an established calibration protocol before the system is first used for irradiation of a patient and then at intervals not exceeding 12 months and after any change significantly altering the calibration, spatial distribution, or other characteristics of the therapy beam.

(-a-) The calibration procedures must be in writing, or documented in an electronic reporting system, and must

have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(-b-) Acceptance testing, commissioning, and dose calibration must be performed as specified in current published recommendations from a nationally recognized professional association with expertise in the use of therapeutic radiation technologies. In the absence of a protocol published by a national professional association, the manufacturer's protocol, or equivalent quality, safety, and security protocols, must be followed.

(-c-) At a minimum, the calibration protocol must include all items in subclauses (III) - (V) of this clause.

(II) The calibration is performed by a licensed medical physicist with a specialty in therapeutic radiological physics who is physically present at the facility during the calibration.

(III) Calibration radiation measurements required by subclause (I) of this clause are performed using a dosimetry system that:

(-a-) has [~~having~~] a calibration factor for cobalt-60 gamma rays traceable to a national standard;

(-b-) is traceable to a national standard and at an interval not to exceed 24 months;

(-c-) is calibrated to the extent an uncertainty can be stated for the radiation quantities monitored by the system; and

(-d-) has [~~having~~] constancy checks performed as specified by the licensed medical physicist with a specialty in therapeutic radiological physics.

(IV) Calibrations must be in sufficient detail to ensure the dose at a reference point in a tissue equivalent phantom can be calculated to within an uncertainty of 5 percent.

(V) The calibration of the therapy unit must include the following determinations.

(-a-) Verification that the equipment is operating in compliance with the design specifications concerning the light field, patient positioning lasers, and back-pointer lights with the isocenter when applicable; variation in the axis of rotation for the table, gantry, and collimator system; and beam flatness and symmetry at the specified depth.

(-b-) Verification of the accuracy of the absorbed dose rate at various depths in a tissue equivalent phantom for the range of field sizes and effective energies used in all therapy procedures.

(-c-) Uniformity of the radiation field to include symmetry, flatness, and dependence on the gantry angle.

(-d-) Verification that existing isodose charts applicable to the specific machine continue to be valid or are updated to existing machine conditions.

(-e-) Verification of transmission factors for all accessories such as wedges, block trays, and universal and custom-made beam modifying devices.

(VI) Calibration of therapeutic systems containing asymmetric jaws, multileaf collimation, or dynamic or virtual wedges must be performed with an established protocol. The procedures must be developed by a licensed medical physicist with a specialty in therapeutic radiological physics and must be in writing or documented in an electronic reporting system.

(iii) QA checks must be performed on systems subject to this paragraph during calibrations and then at weekly intervals with the period between QA checks not to exceed five treatment days. Such radiation output measurements must meet the following requirements.

(I) The QA check procedures must be performed as specified in established protocol, be in writing, or documented in an electronic reporting system, and be developed by a licensed medical physicist with a specialty in therapeutic radiological physics. The protocol must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations. At a minimum, the QA check protocol must include all items in subclauses (III) - (VI) of this clause.

(II) If a licensed medical physicist does not perform the QA check measurements, the results of the QA check measurements must be reviewed by a licensed medical physicist at a frequency not to exceed five treatment days and a record kept of the review. If the output varies by more than 3 percent from the expected value, a licensed medical physicist must be notified immediately.

(III) The written QA check procedures must specify the frequency at which tests or measurements are performed and the acceptable tolerance for each parameter measured in the QA check when compared to the value for that parameter determined in the calibration.

(IV) Where a system has built-in devices providing a measurement of any parameter during irradiation, such measurement must not be utilized as a QA check measurement.

(V) A parameter exceeding a tolerance set by a licensed medical physicist must be corrected before the system is used for patient irradiation.

(VI) Whenever a QA check indicates a significant change in the operating characteristics of a system, as specified in a licensed medical physicist's written procedures, the system must be recalibrated.

(VII) Records of QA check measurements and any necessary corrective actions must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(VIII) QA checks must be completed using a system satisfying the requirements of clause (ii)(III) of this subparagraph.

(iv) Facilities with therapeutic radiation machines with energies of 1 MeV and above must procure the services of a licensed medical physicist with a specialty in therapeutic radiological physics.

(I) The physicist must be responsible for:

(-a-) dose calibration of radiation machines;

(-b-) supervision and review of beam and clinical dosimetry;

(-c-) measurement, analysis, and tabulation of beam data;

(-d-) establishment of QA procedures and performance of QA check review; and

(-e-) review of absorbed doses delivered to patients.

(II) The licensed medical physicist described in subclause (I) of this clause must also be available and responsive to immediate problems or emergencies.

(4) Requirements for EBT devices. In addition to the requirements in paragraph (1) of this subsection, EBT devices must meet the requirements in this paragraph.

(A) Technical requirements for EBT devices.

(i) The timer must:

(I) have a display provided at the treatment control panel and a pre-set time selector;

(II) activate with the production of radiation and retain its reading after irradiation is interrupted;

(III) be reset to zero after irradiation is terminated and before irradiation can be re-initiated;

(IV) terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation;

(V) permit selection of exposure times as short as 1 second;

(VI) not permit an exposure if set at zero; and

(VII) be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(ii) The control panel, in addition to the displays required in subparagraph (A)(i) of this paragraph, must have:

(I) an indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(II) means for indicating x-rays are being produced;

(III) means for indicating x-ray tube potential and current; and

(IV) means for terminating an exposure at any time.

(iii) All emergency buttons or switches must be clearly labeled as to the intended [~~their~~] functions.

(B) Surveys, calibrations, and QA checks.

(i) Survey procedures.

(I) All new and existing facilities with an EBT device must have an initial shielding survey made by a licensed medical physicist, with a specialty in therapeutic radiological physics or medical health physics [~~as authorized by 22 TAC §160.17~~], who must provide a written survey report to the registrant. Additional surveys must be done when:

(-a-) making any change in the portable shielding; and

(-b-) relocating the electronic therapy device.

(II) The registrant must maintain a copy of the initial survey report and all subsequent survey reports as specified in subsection (l) of this section for inspection by the department.

(III) The survey report must indicate all instances where the installation is in violation of the applicable requirements of this chapter.

(ii) Calibration [~~Calibrations~~] procedures. Records of calibration measurements must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department. A copy of the latest calibrated absorbed dose rate measured on the EBT device must be available at a designated area within the therapy facility housing the EBT device.

(I) Calibration procedures must be in writing, or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) The registrant must make calibration measurements required by this section as specified in any current recommendations from a recognized national professional association (such as the American Association of Physicists in Medicine Report Number 152) for an EBT device, when available. Equivalent alternative methods are acceptable. In the absence of a protocol by a national professional association, a published protocol included in the device manufacturer operator's manual must be followed.

(III) The calibration of the EBT device must be performed after changing the x-ray tube or replacing components that could cause a change in the radiation output. The calibration must ensure the dose at a reference point in a water or plastic phantom can be calculated to within an uncertainty of 5 percent.

(IV) The calibration of the radiation output of the EBT device must be performed by a licensed medical physicist with a specialty in therapeutic radiological physics who is physically present at the facility during such calibration.

(V) The calibration of the therapeutic EBT device must include verification that the EBT device is operating in compliance with the design specifications.

(VI) Calibration of the radiation output of the EBT device must be performed with a calibrated dosimetry system. The dosimetry calibration must be traceable to a national standard. The calibration interval must not exceed 24 months.

(iii) QA check. Records of the written QA checks and any necessary corrective actions must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department. A copy of the most recent QA check must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(I) QA check procedures must be in writing, or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) If a licensed medical physicist does not perform the QA check measurements: [~~,~~]

(-a-) the results of the QA check measurements must be reviewed by a licensed medical physicist with a specialty in therapeutic radiological physics within two treatment days; [~~,~~] and

(-b-) a record must be made of the review.

(III) The written QA check procedures must specify the operating instructions required to be carried out whenever a parameter exceeds an acceptable tolerance as established by the licensed medical physicist.

(IV) The certified physician or licensed medical physicist must prevent the clinical use of a malfunctioning device until the malfunction identified in the QA check has been evaluated and corrected or, if necessary, the equipment repaired.

(V) QA checks must be completed using a dosimetry system satisfying the requirements of clause (ii)(VI) of this subparagraph.

(5) Radiation therapy simulation systems.

(A) General requirements. In addition to the requirements in paragraph (1)(B), (C), (F), and (H) of this subsection, radiation therapy simulation systems must comply with the following. [~~:~~]

(i) Technique chart. A technique chart relevant to the radiation machine is provided or electronically displayed in the vicinity of the console and used by all operators.

(ii) Operating and safety procedures. Each registrant develops, implements, and maintains written OSP as specified in paragraph (1)(G) of this subsection and §289.227(i)(2)(A) of this subchapter [~~chapter~~].

(iii) Protective devices. When utilized, protective devices meet the following requirements.

(I) Protective devices must be made of no less than 0.25 mm lead equivalent material.

(II) Protective devices, including aprons, gloves, and shields, are checked annually for defects, such as holes, cracks, and tears. The registrant must perform these checks by visual, tactile, or x-ray imaging. If a defect is found, equipment must be replaced or removed from service until repaired. A record of this test is made and maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(iv) Viewing system. Windows, mirrors, closed circuit television, or an equivalent system is provided to permit the operator to continuously observe the patient during irradiation. The operator is able to maintain continuous verbal, visual, and aural contact with the patient.

(v) Operator position. The operator's position during the exposure ensures the operator's exposure is as low as reasonably achievable (ALARA). The operator is a minimum of 6 feet from the source of radiation or protected by an apron, gloves, or other shielding having a minimum of 0.25 mm lead equivalent material.

(vi) Holding of the tube. An individual does not hold the tube or tube housing assembly supports during any radiographic exposure.

(vii) No individuals other than the patient and the operator are allowed in the treatment room during the operation of the simulator.

(B) Facility design requirements.

(i) Provision must be made for two-way aural communication between the patient and the operator at the control panel.

(ii) Windows, mirrors, closed-circuit television, or an equivalent must be provided to permit continuous patient observation during irradiation and be located so the operator can see the patient from the console. If the viewing system described in this clause fails or is inoperable, the unit must not be used until the system is restored.

(iii) In a facility with a primary viewing system by electronic means and an alternate viewing system, and both viewing systems described in this clause fail or are inoperative, the unit must not be used until one of the systems is restored.

(C) Requirements for radiation therapy simulation systems utilizing standard CT systems.

(i) Equipment requirements.

(I) Tomographic systems must meet the following requirements: [~~.~~]

(-a-) for [~~For~~] any single tomogram system, means must be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane; or [~~.~~]

(-b-) for [~~For~~] any multiple tomogram system, means must be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane; and [~~.~~]

(-c-) if [~~If~~] a device using a light source is used to satisfy the requirements of item (-a-) or (-b-) of this subclause, the light source must provide illumination levels sufficient to permit visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(II) The CT system must be designed so the CT conditions of operation to be used during a scan or a scan sequence are indicated before the initiation of a scan or a scan sequence. For equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of CT conditions must be visible from any position from which scan initiation is possible.

(III) The CT control and gantry must provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed.

(IV) Means must be provided to require operator initiation of each individual scan or series of scans.

(V) All emergency buttons or switches must be clearly labeled as to the intended [~~their~~] functions.

(VI) Termination of exposure must meet the following requirements.

(-a-) Means must be provided to terminate the x-ray exposure automatically by either de-energizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination must occur within an interval limiting the total scan time to no more than 110 percent of its preset value using either a backup timer or a device that monitors equipment function.

(-b-) A signal visible to the operator must indicate when the x-ray exposure has been terminated through the means required by item (-a-) of this subclause.

(-c-) The operator must be able to terminate the x-ray exposure at any time during a scan or series of scans under CT system control of greater than 0.5 second duration. Termination of the x-ray exposure must necessitate resetting the CT conditions of operation before initiation of another scan.

(VII) CT systems containing a gantry must meet the following requirements.

(-a-) The total error in the indicated location of the tomographic plane or reference plane must not exceed 5 mm.

(-b-) If the x-ray production period is less than 0.5 seconds, the indication of x-ray production must be actuated for at least 0.5 seconds. Indicators at or near the gantry must be discernible from any point external to the patient opening, where insertion of any part of the human body into the primary beam is possible.

(-c-) The deviation of indicated scan increment versus actual increment must not exceed plus-or-minus [~~plus or minus~~] 1 mm with any mass from 0 to 100 kilograms (kg) resting on the support device. The patient support device must be incremented from a typical starting position to the maximum incremented distance or 30 cm, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment can be taken anywhere along this travel.

(ii) Additional requirements for CT systems integrated with virtual simulation features and linear accelerator capabilities (e.g., 3-D cone beam or modulation).

(I) QA procedures for the CT simulation system must be performed with an established protocol meeting or exceeding

nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(II) QA procedures for the CT simulation system must be in writing, or documented in an electronic reporting system, by a licensed medical physicist with a specialty in therapeutic radiological physics.

(III) The electronic transfer of the treatment delivery parameters to the delivery system must be verified at the treatment location. The CT simulation treatment planning and the linear accelerator must interface accurately.

(iii) QA for CT simulation software.

(I) QA procedures for CT simulation software systems must be in writing, or documented in an electronic reporting system, by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) The protocol established must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(III) The CT QA procedures must include:

(-a-) spatial/geometry accuracy tests;

(-b-) evaluation of digitally reconstructed radiographs; and

(-c-) periodic QA testing.

(IV) The electronic transfer of the treatment delivery parameters to the delivery system must be verified at the treatment location. The software for the CT simulation treatment planning computer and the linear accelerator must interface accurately.

(iv) Dose measurements of the radiation output of the CT system.

(I) Dose measurements must be completed as specified in §289.227(n)(3) of this subchapter [~~chapter~~].

(II) Equipment performance evaluations (EPEs) must be completed as specified in §289.227(o) of this subchapter [~~chapter~~].

(III) Records of dose measurements and EPEs specified in subclause (I) and (II) of this clause must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(D) A maintenance schedule must be developed as specified by the manufacturer. The schedule must include:

(i) dose measurements required by subparagraph (C)(iv) of this paragraph; and

(ii) acquisition of images obtained with phantoms using the same processing mode and CT conditions of operation as are used to perform dose measurements required by subparagraph (F) of this paragraph. The registrant must maintain either of the following as specified in subsection (l) of this section for inspection by the department:

(I) copies of the images obtained from the image display device; or

(II) images stored in digital form.

(E) Conventional radiation therapy simulation systems designed with x-ray or fluoroscopic capabilities.

(i) Film processing.

(I) Films must be developed according to the time-temperature relationships recommended by the film manufacturer. The specified developer temperature for automatic processing and the time-temperature chart for manual processing must be posted in the darkroom. If the registrant determines an alternate time-temperature relationship is more appropriate for a specific facility, the time-temperature relationship must be documented and posted.

(II) Chemicals must be replaced according to the chemical manufacturer's or supplier's recommendations or at an interval not to exceed three months.

(III) Darkroom light leak tests must be performed and any light leaks corrected at intervals not to exceed six months.

(IV) Lighting in the film processing and loading area must be maintained with the filter, bulb wattage, and distances recommended by the film manufacturer for that film emulsion or with products providing an equivalent level of protection against fogging.

(V) Corrections or repairs of the light leaks or other deficiencies in subclauses (II), (III), and (IV) of this clause must be initiated within 72 hours of discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the department. Records of the correction or repairs must include the date and initials of the individual performing these functions and must be maintained as specified in subsection (l) of this section for inspection by the department.

(VI) Documentation of the items in subclauses (II), (III), and (V) of this clause must be maintained at the site where performed and must include the date and initials of the individual completing these items. These records must be kept as specified in subsection (l) of this section for inspection by the department.

(ii) Alternative processing systems. Users of daylight processing systems, laser processors, self-processing film units, or other alternative processing systems must follow the manufacturer's recommendations for image processing. Documentation that the registrant is following the manufacturer's recommendations must include the date and initials of the individual completing the document and must be maintained at the site where performed as specified in subsection (l) of this section for inspection by the department.

(iii) Digital imaging acquisition systems. Users of digital imaging acquisition systems must follow the QA protocol for image processing established by the manufacturer or, if no manufacturer's protocol is available, by the registrant. The registrant must include the protocol, whether established by the registrant or the manufacturer, in its OSP. The registrant must document the frequency at which the QA protocol is performed. Documentation must include the date and initials of the individual completing the document and must be maintained at the site where performed as specified in subsection (l) of this section for inspection by the department.

(F) Additional requirements for conventional radiation therapy simulation systems used in the general radiographic mode of operation for radiation therapy port documentation.

(i) Beam quality. The half-value layer of the useful beam for a given x-ray tube potential must not be less than the values shown in Table IV. If it is necessary to determine such half-value layer at an x-ray tube potential not listed in Table IV, linear interpolation may be made.

Figure: 25 TAC §289.229(h)(5)(F)(i) (No change.)

(ii) Technique and exposure indicators.

(I) The technique factors to be used during an exposure must be indicated before the exposure begins except when automatic exposure controls are used, in which case the technique factors set before the exposure must be indicated.

(II) The indicated technique factors must meet the manufacturer's specifications. If these specifications are not available from the manufacturer, the factors must be accurate to within plus-or-minus [~~plus or minus~~] 10 percent of the indicated setting.

(iii) Beam limitation.

(I) The beam limiting device (collimator) must restrict the useful beam to the area of clinical interest.

(II) A method must be provided to visually define the center (cross-hair centering) of the x-ray field to within a 2 mm diameter.

(III) A method must be provided to accurately indicate the distance to within 2 mm.

(IV) The delineator wires must be accurate with the indicated setting within 2 mm.

(V) The x-ray field must be congruent with the light field within 2 mm.

(iv) Timers. Means must be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it must not be possible to make an exposure when the timer is set to a "zero" or "off" position and a visual and audible signal must indicate when an exposure has been terminated.

(v) Automatic exposure control (AEC). When an AEC is provided, an indication must be made on the control panel when this mode of operation is selected.

(vi) Timer reproducibility. When all technique factors are held constant, including control panel selections associated with AEC systems, the coefficient of variation of exposure interval for both manual and AEC systems must not exceed 0.05. This requirement applies to clinically used techniques.

(vii) Exposure reproducibility. When all technique factors are held constant, including control panel selections associated with AEC systems, the coefficient of variation of exposure for both manual and AEC systems must not exceed 0.05. This requirement applies to clinically used techniques.

(viii) Linearity. The average ratios of exposure in milliRoentgen (mR) to the indicated Milliampere-seconds (mAs) product obtained at any two consecutive Milliampere (mA) or mAs settings must not differ by more than 0.10 times the sum. It is calculated using the following equation.

Figure: 25 TAC §289.229(h)(5)(F)(viii)

[~~Figure:~~ 25 TAC §289.229(h)(5)(F)(viii)]

(G) Additional requirements for radiation therapy simulation systems utilizing fluoroscopic capabilities.

(i) X-ray production in the fluoroscopic mode must be controlled by a device requiring continuous pressure by the fluoroscopist for the entire time of the exposure (continuous pressure type switch).

(ii) During fluoroscopy and cinefluorography, the kV and the mA must be continuously indicated at the control panel and the fluoroscopist's position.

(iii) The SSD must not be less than 20 cm for image-intensified fluoroscopes used for examinations as specified in the registrant's OSP. The written OSP must provide precautionary measures to be adhered to during the use of this device. The procedures must provide information on the means to restore the unit to a 30 cm SSD when the unit is returned to general service.

(iv) Fluoroscopic timers must meet the following requirements.

(I) Means must be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device must not exceed five minutes without resetting.

(II) A signal audible to the fluoroscopist must indicate the completion of any preset cumulative on-time. The signal must continue to sound while x-rays are produced until the timing device is reset. In lieu of such a signal, the timer must terminate the beam after the preset cumulative on-time is completed.

(v) The exposure foot switch must be permanently mounted in the control booth to ensure the operator cannot enter the simulator room while the fluoroscope is activated.

(vi) Radiation therapy simulation systems must duplicate the geometric conditions of the radiation therapy equipment plan, and therefore measurements regarding geometric conditions must be performed as specified in subsection (h)(3)(C)(iii)(I) of this section.

(vii) If the treatment-planning system is different from the treatment-delivery system, the accuracy of electronic transfer of the treatment-delivery parameters to the treatment-delivery unit must be verified at the treatment location.

(i) Medical events.

(1) Medical events involving equipment operating at energies below 1 MeV and EBT devices must be reported when:

(A) the event involves the wrong individual, or the wrong treatment site;

(B) the treatment consists of three or fewer fractions, and the calculated total administered dose differs from the total prescribed dose by more than 10 percent; or

(C) the calculated total administered dose differs from the total prescribed dose by more than 20 percent.

(2) Medical events involving equipment operating with energies of 1 MeV and above must be reported when:

(A) the event involves the wrong individual, wrong type of radiation, wrong energy, or wrong treatment site;

(B) the treatment consists of three or fewer fractions, and the calculated total administered dose differs from the total prescribed dose by more than 10 percent;

(C) the calculated total administered dose differs from the total prescribed dose by more than 20 percent; or

(D) the combination of external beam radiation therapy and radioactive material therapy causes over-radiation of a patient resulting in physical injury or death.

(j) Reports of medical events.

(1) For a medical event, a registrant must do the following:

(A) notify the department by telephone no later than 24 hours after the discovery of the event;

(B) notify the referring physician and the patient of the event no later than 24 hours after its discovery, unless the referring physician personally informs the registrant that either the referring physician will inform the patient or that based on medical judgment, telling the patient would be harmful; the [. ~~The~~] registrant:

(i) is not required to notify the patient without first consulting the referring physician (if [, ~~If~~] the referring physician or patient cannot be reached within 24 hours, the registrant must notify the patient as soon as possible); [. ~~The registrant~~]

(ii) may not delay any appropriate medical care for the patient, including any necessary remedial care as a result of the event, because of any delay in notification;

(C) submit a written report to the department within 15 days after the discovery of the event and the [. ~~The~~] report must:

(i) not include the patient's name or other information that could lead to the identification of the patient; [. ~~The written report must~~]

(ii) include the following:

(I) [~~(i)~~] registrant's name and certificate of registration number;

(II) [~~(ii)~~] prescribing physician's name;

(III) [~~(iii)~~] a brief description of the event;

(IV) [~~(iv)~~] why the event occurred;

(V) [~~(v)~~] the effect on the patient;

(VI) [~~(vi)~~] what improvements are needed to prevent recurrence;

(VII) [~~(vii)~~] actions taken to prevent recurrence;

(VIII) [~~(viii)~~] whether the registrant notified the patient, or the patient's responsible relative or guardian (this person will be subsequently referred to as "the patient"); and if not, why not; and

(IX) [~~(ix)~~] if the patient was notified, what information was provided to the patient; and

(D) furnish the following to the patient within 15 days after discovery of the event if the patient was notified:

(i) a copy of the report that was submitted to the department; or

(ii) a brief description of both the event and the consequences, as they may affect the patient, provided a statement is included that the report submitted to the department can be obtained from the registrant.

(2) Each registrant must retain a record of each event as specified in subsection (l) of this section for inspection by the department. The record must contain the following:

(A) the names of all involved, [~~(~~]including the prescribing physician, allied health personnel, the patient, and the patient's referring physician[~~)~~];

(B) the patient's identification number;

(C) a brief description of the event;

(D) why the event [~~it~~] occurred;

(E) the effect on the patient;

(F) what improvements are needed to prevent recurrence; and

(G) the actions taken to prevent a recurrence.

(3) Aside from the notification requirement, nothing in subsection (i) of this section and paragraphs (1) and (2) of this subsection affects any rights or duties of registrants, and physicians in relation to each other, patients, or the patient's responsible relatives or guardians.

(k) Emerging and future technologies.

(1) Each registrant must develop, implement, and maintain a dedicated quality management program to control the process of administering therapeutic radiation with newly acquired FDA-cleared emerging technologies or previously unused features of a future technology system.

(2) Implementation and ongoing clinical use of the technology dated before the technology arrives at the facility or the new features are used must include:

(A) an explicit strategy to ensure the quality of processes and patient safety; and

(B) an approval from facility management and the radiation oncology safety team before the technology arrives or new features are used.

(3) The radiation oncology safety team must develop the quality management program.

(4) The quality management program must address, at a minimum:

(A) education and training about the new technology and features;

(B) a system and timeline for ongoing competency assessment;

(C) a system for real-time recording of ongoing issues related to the technology and clinical use of the new technology or features;

(D) a strategy for timely investigation and adjudication of accidents and process deviations that may be captured in the system developed in paragraph (2) of this subsection;

(E) a strategy for routine review at intervals not to exceed 12 months of the clinical use of the new technology and features, which includes an assessment of the current use compared to paragraph (2) of this subsection and plan to either update the clinical use plan or steps to bring the clinical use back into alignment with paragraph (2) of this subsection;

(F) a strategy to ensure the quality of equipment functions; and

(G) an explicit strategy for ensuring quality after hardware and software updates and after equipment repair.

(5) The quality management program must follow current published recommendations from a recognized national professional association with expertise in therapeutic radiation technologies. In the absence of a protocol published by a national professional association, the manufacturer's protocol or equivalent quality, safety, and security protocol must be followed.

(6) New technology issues must be reported to the manufacturer and the department, and be reviewed and addressed via the registrant's reporting system.

(l) Records for department inspection. The registrant must maintain the following records at the time intervals specified, for inspection by the department. The records may be maintained in electronic format.

Figure: 25 TAC §289.229(l)

[~~Figure: 25 TAC §289.229(l)~~]

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

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

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Cynthia Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 834-6655

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PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 602. PROCEDURE REQUIRING FULL DISCLOSURE OF SPECIFIC RISKS AND HAZARDS--LIST A

25 TAC §§602.6, 602.8, 602.14, 602.19, 602.21

The Texas Medical Disclosure Panel (Panel) proposes amendments to §602.6, concerning Eye Treatments and Procedures; §602.8, concerning Hematic and Lymphatic System Treatments and Procedures; §602.14, concerning Radiology Treatments and Procedures; §602.19, concerning Laparoscopic, Thoracoscopic and Robotic Surgery Treatments and Procedures; and §602.21, concerning Dental Surgery Treatments and Procedures.

BACKGROUND AND PURPOSE

The purpose of this proposal is to revise the lists of procedures and risks and hazards and use plain language when possible.

These proposed amendments are in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to patients or persons authorized to consent for patients and to establish the general form and substance of such disclosure.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §602.6 revises the types of eye system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with the eye system treatments and procedures, and include plain language explanations, where necessary.

The proposed amendment to §602.8 revises the types of hematic and lymphatic system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with the hematic and lymphatic system treatments and procedures, and include plain language explanations, where necessary.

The proposed amendment to §602.14 revises the types of radiology treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with the radiology treatments and procedures, and include plain language explanations, where necessary.

The proposed amendment to §602.19 revises the types of laparoscopic, thoracoscopic and robotic surgery treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with the laparoscopic, thoracoscopic and robotic surgery treatments and procedures, and include plain language explanations, where necessary.

The proposed amendment to §602.21 revises the types of dental treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with the dental treatments and procedures, and include plain language explanations, where necessary.

FISCAL NOTE

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create new regulations;

(6) the proposed rules will not expand, limit, or repeal existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the Panel has insufficient information to determine the proposed rules' effect on the state's economy.

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

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

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

The Panel is unable to provide an estimate of the number of small businesses and micro-businesses affected.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Dr. Noah Appel has determined that for each year of the first five years the rules are in effect, the public benefit will be improved consistency and clarity in this chapter of the Texas Administrative Code.

Dr. Noah Appel has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Kelli Weldon, TMDP Liaison, Texas Health and Human Services Commission, P.O. Box 149030, Mail Code E-249, Austin, Texas, 78714-9030; or emailed to HHSC_TMDP@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period . If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed TMDP Revisions to Chapter 602" in the subject line.

ADDITIONAL INFORMATION

For further information, please call: (512) 438-2889.

STATUTORY AUTHORITY

The amendments are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

The amendments implement Texas Civil Practice and Remedies Code Chapter 74, Subchapter C.

§602.6. Eye Treatments and Procedures.

(a) Eye muscle surgery.

(1) Complications requiring additional [~~Additional~~] treatment and/or surgery.

(2) Double vision.

(3) Partial or total blindness.

(b) Surgery for cataract with or without implantation of intraocular lens.

(1) Complications requiring additional treatment and/or surgery.

(2) Need for glasses or contact lenses.

(3) Complications requiring the removal of implanted lens.

(4) Partial or total blindness.

(c) Retinal or vitreous surgery.

(1) Complications requiring additional treatment and/or surgery.

(2) Recurrence or spread of disease.

(3) Partial or total blindness.

(d) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty (removal of excess tissue from eyelids), tumor, fracture (broken bone), lacrimal (related to tears/tearducts) surgery, foreign body, abscess (infected fluid collection), or trauma.

(1) Partial or total blindness [~~Blindness~~].

(2) Nerve damage with loss of use and/or feeling to eye or other areas of face.

(3) Painful or unattractive scarring.

(4) Worsening or unsatisfactory appearance.

(5) Dry eye.

(e) Photocoagulation and/or cryotherapy.

(1) Complications requiring additional treatment and/or surgery.

(2) Pain.

(3) Partial or total blindness.

(f) Corneal surgery, such as corneal transplant, refractive surgery (for example LASIK) and removal of pterygium (growth of the lining of the eyelid/covering of eye, possibly onto cornea).

(1) Complications requiring additional treatment and/or surgery.

(2) Pain.

(3) Need for glasses or contact lenses.

(4) Partial or total blindness.

(5) Risk of recurrence (for removal of pterygium).

(g) Glaucoma surgery by any method.

(1) Complications requiring additional treatment and/or surgery.

(2) Worsening of the glaucoma.

(3) Pain.

(4) Partial or total blindness.

(h) Enucleation or evisceration (removal of the eye or its contents) [~~Removal of the eye or its contents (enucleation or evisceration)~~].

(1) Complications requiring additional treatment and/or surgery.

(2) Worsening or unsatisfactory appearance.

(3) Recurrence or spread of disease.

(i) Surgery for penetrating ocular (eyeball) injury, including intraocular (inside the eyeball) foreign body.

(1) Complications requiring additional treatment and/or surgery.

(2) Possible removal of eye.

(3) Pain.

(4) Partial or total blindness.

(j) Retrobulbar (behind the eyeball) injections of drugs/pharmaceuticals.

(1) Retrobulbar hemorrhage (bleeding behind the eyeball) with potential blindness.

(2) Ocular perforation (hole in the eyeball) with potential blindness.

(3) Subarachnoid or intradural injection (injection into the space around the nerves and brain) with possible death.

(4) Diplopia secondary to myotoxicity (double vision due to muscle injection).

(5) Cardiorespiratory failure (heart and lungs stop working, possible death).

(6) Contusion and atrophy of the optic nerve (bruising and shrinking of the nerve for the eye).

(7) Vascular retinal occlusion (closure of the blood vessels to the vision part of the eye).

(8) Seizure.

(9) Corneal abrasion (scratch of the surface of the eye).

(10) Chemosis (swelling of the surface of the eye membrane).

(11) Ptosis (eyelid drooping).

(k) Orbital or periocular injections of drugs/pharmaceuticals (injection of medicines in the space around the eyeball).

(1) Partial or total blindness.

(2) Headache.

(3) Dizziness.

(4) Arm weakness.

(5) Ocular complications.

(6) Eyelid swelling.

(7) Periorbital or orbital (around the eye) pain.

(8) Ptosis (eyelid drooping).

§602.8. Hematic and Lymphatic System Treatments and Procedures.

(a) Transfusion of blood and blood components.

(1) Serious infection, including [~~but not limited to~~] Hepatitis and HIV which can lead to organ damage and permanent impairment.

(2) Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.

(3) Severe allergic reaction, potentially fatal.

(4) For women of childbearing age, Rh alloimmunization with potential for hemolytic disease of the fetus and newborn if not treated (development of antibodies by the mother that destroy the baby's red blood cells).

(b) Splenectomy.

(1) Susceptibility to infections and increased severity of infections.

(2) Increased immunization requirements.

(c) Lymph Node Dissection (removal of lymph nodes).

(1) Lymphedema (swelling) of the involved extremity.

(2) Nerve injury (numbness, tingling, loss of muscle function) of the involved extremity.

(d) Lymph node transplant/transfer/lymphovenous bypass (moving lymph nodes/ducts from one part of the body to another).

(1) Donor site lymphedema (swelling).

(2) Nerve injury (numbness, tingling, loss of muscle function).

(3) Chylous leak or lymphorrhea (leaking of fluid from lymphatic ducts).

(4) Flap failure (where flap is used).

(e) Lymphangiography (injection of the lymphatic vessels/lymph nodes) and Lymphatic embolization, including thoracic duct embolization.

(1) Lower extremity swelling; worsening of lower extremity swelling.

(2) Chronic diarrhea.

(3) Nontarget embolization (occlusion of duct or blood vessel other than intended duct).

(4) Pulmonary infarction (death of a portion of lung).

(5) Pulmonary edema (fluid in the lungs) and/or development of acute respiratory distress syndrome.

(6) Hemoptysis (coughing blood).

(7) Cerebral oil embolization (oil contrast goes to blood vessels in the brain) which can cause damage to the brain.

(8) Visceral oil embolization (oil contrast goes to liver, kidney or other abdominal organ).

(9) Risk relevant to the route of access (for direct puncture of abdomen, risk of injury to abdominal organs, for venous access, risks of angiography).

§602.14. Radiology Treatments and Procedures.

(a) Splenoportography (needle injection of contrast media into the spleen).

(1) All associated risks for angiography as listed under §602.2(b)(2) of this chapter (relating to Cardiovascular System Treatments and Procedures).

(2) Injury to the spleen requiring blood transfusion and/or removal of the spleen.

(b) Chemoembolization (injection of chemotherapy medications into tumor and/or organ requiring treatment by way of the blood vessels).

(1) All associated risks for angiography as listed under §602.2(b)(2) of this chapter.

(2) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(3) Injury to or failure of liver (or other organ in which tumor is located or treatment is administered).

(4) Risks of the chemotherapeutic agent(s) utilized.

(5) Cholecystitis (inflammation of the gallbladder) (for liver or other upper GI embolizations).

(6) Abscess (infected fluid collection) in the liver or other embolized organ requiring further intervention.

(7) Biloma (collection of bile in or near the liver requiring drainage) (for liver embolizations).

(c) Radioembolization (injection of radioactive particles into blood supply to organ and/or tumor being treated).

(1) All associated risks for angiography as listed under §602.2(b)(2) of this chapter.

(2) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(3) Injury to or failure of liver (or other organ in which tumor is located) that is potentially fatal.

(4) Radiation complications: pneumonitis (inflammation of lung) which is potentially fatal; inflammation of stomach, intestines, gallbladder, pancreas; stomach or intestinal ulcer; scarring of liver.

(d) Thermal (heating or freezing) and other ablative (destructive) techniques for treatment of tumors (for curative intent or palliation), including radiofrequency ablation, microwave ablation, cryoablation, and high intensity focused ultrasound (HIFU).

(1) Injury to tumor-containing organ or adjacent organs/structures.

(2) Injury to nearby nerves potentially resulting in temporary or chronic (continuing) pain and/or loss of use and/or feeling.

(3) Failure to completely treat tumor or recurrence of tumor.

(e) TIPS (Transjugular Intrahepatic Portosystemic Shunt) and its variants such as DIPS (Direct Intrahepatic Portocaval Shunt (creation of connection between separate sets of blood vessels in the liver or adjacent to the liver to bypass blood flow through the liver tissue).

(1) All associated risks for angiography, angioplasty, and endovascular stenting as listed under §602.2(b)(2)-(4) of this chapter.

(2) Hepatic encephalopathy (confusion/decreased ability to think).

(3) Liver failure or injury.

(4) Gallbladder injury.

(5) Hemorrhage (severe bleeding).

(6) Recurrent ascites (fluid building up in abdomen) and/or bleeding.

(7) Kidney failure.

(8) Heart failure.

(9) Death.

(f) Myelography (injection of contrast into the spinal canal).

(1) Chronic (continuing) pain.

(2) Nerve injury with loss of use and/or feeling.

(3) Transient (temporary) headache, nausea, and/or vomiting.

(4) Numbness.

(5) Seizure.

(g) Fluid collection drainage inclusive of percutaneous (through the skin), [~~Percutaneous abscess/fluid collection drainage (percutaneous abscess/seroma/lymphocele drainage and/or sclerosis (inclusive of percutaneous,~~] transgluteal (through the buttocks), transrectal (through the rectum) and transvaginal (through the vagina) routes[~~)~~].

(1) Sepsis (infection in the blood stream), possibly resulting in shock (severe decrease in blood pressure).

(2) Injury to nearby organs.

(3) Hemorrhage (severe bleeding).

(4) Infection of collection which was not previously infected, or additional infection of abscess.

(h) Procedures utilizing prolonged fluoroscopy.

(1) Skin injury (such as epilation (hair loss), burns, or ulcers).

(2) Cataracts (clouding of the lens in the eye); (for procedures in the region of the head).

§602.19. Laparoscopic, Thoracoscopic and Robotic Surgery Treatments and Procedures.

The following shall be in addition to risks and hazards of the same surgery when done as an open procedure.

(1) Thoracic (chest) procedures.

(A) [~~(1)~~] Damage during introduction of trocar to adjacent intra-thoracic [~~intra-abdominal~~] structures (e.g., organs, blood vessels, or other vital tissues) and potential need for additional surgery.

(B) [~~(2)~~] Trocar site complications (e.g., hematoma/bleeding, leakage of fluid[~~, or hernia formation~~]).

(C) [~~(3)~~] Air embolus (bubble causing heart failure or stroke).

[~~(4)~~] [~~Postoperative pneumothorax (collapsed lung).~~]

(D) [~~(5)~~] Subcutaneous emphysema (air in between skin layers).

(E) [~~(6)~~] Change during the procedure to an open procedure.

(F) [~~(7)~~] If cancer is present, may increase the risk of the spread of cancer.

(2) Abdominal procedures.

(A) Damage during introduction of trocar to adjacent intra-abdominal structures (e.g., organs, blood vessels, or other vital tissues) and potential need for additional surgery.

(B) Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).

(C) Air embolus (bubble causing heart failure or stroke).

(D) Postoperative pneumothorax (collapsed lung).

(E) Subcutaneous emphysema (air in between skin layers).

(F) Change during the procedure to an open procedure.

(G) If cancer is present, may increase the risk of the spread of cancer.

§602.21. Dental Surgery Treatments and Procedures.

(a) Oral surgery.

(1) Extraction (removing teeth).

(A) Dry socket (inflammation in the socket of a tooth).

(B) Permanent or temporary numbness or altered sensation.

(C) Sinus communication (opening from tooth socket into the sinus cavity).

(D) Fracture of alveolus, maxilla, and/or mandible (upper and/or lower jaw).

(E) Damage to adjacent teeth, structures, and soft tissue.

(2) Surgical exposure of tooth in order to facilitate orthodontics.

(A) Injury to tooth or to adjacent teeth and structures.

(B) Failure to get proper attachment to tooth requiring additional procedure.

(b) Endodontics (deals with diseases of the dental pulp).

(1) Apicoectomy (surgical removal of root tip or end of the tooth, with or without sealing it).

(A) Shrinkage of the gums and crown margin exposure.

(B) Sinus communication (opening from tooth socket into the sinus cavity).

(C) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(2) Root amputation (surgical removal of portion of one root of a multi-rooted tooth).

(A) Shrinkage of the gums and crown margin exposure.

(B) Sinus communication (opening from tooth socket into the sinus cavity).

(C) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(3) Root canal therapy (from an occlusal access in order to clean and fill the canal system).

(A) Instrument separation (tiny files which break within the tooth canal system).

(B) Fenestration (penetration of walls of tooth into adjacent tissue).

(C) Failure to find and/or adequately fill all canals.

(D) Expression of irrigants or filling material past the apex of the tooth (chemicals used to clean or materials used to fill a root may go out the end of the root and cause pain or swelling).

(E) Damage to adjacent tissues from irrigants or clamps.

(F) Fracture or loss of tooth.

(c) Periodontal surgery (surgery of the gums).

(1) Gingivectomy and gingivoplasty (involves the removal of soft tissue).

(A) Tooth sensitivity to hot, cold, sweet, or acid foods.

(B) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(2) Anatomical crown exposure (removal of enlarged gingival tissue and supporting bone to provide an anatomically correct gingival relationship).

(A) Tooth sensitivity to hot, cold, sweet, or acid foods.

(B) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(3) Gingival flap procedure, including root planing (soft tissue flap is laid back or removed to allow debridement (cleaning) of the root surface and the removal of granulation tissue (unhealthy soft tissue)).

(A) Permanent or temporary numbness or altered sensation.

(B) Tooth sensitivity to hot, cold, sweet, or acid foods.

(C) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(4) Apically positioned flap (used to preserve keratinized gingival (attached gum tissue) in conjunction with osseous resection (removal) and second stage implant procedure).

(A) Permanent or temporary numbness or altered sensation.

(B) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(5) Clinical crown lengthening (removal of gum tissue and/or bone from around tooth).

(A) Permanent or temporary numbness or altered sensation.

(B) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(6) Osseous surgery, [-]including flap entry and closure (modification of the bony support of the teeth).

(A) Permanent or temporary numbness or altered sensation.

(B) Tooth sensitivity to hot, cold, sweet, or acid foods.

(C) Loss of tooth.

(D) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(7) Guided tissue regeneration-resorbable barrier.

(A) Permanent or temporary numbness or altered sensation.

(B) Accidental aspiration (into the lungs) of foreign matter.

(C) Rejection of donor materials.

(8) Guided tissue regeneration-nonresorbable barrier (includes membrane removal).

(A) Permanent or temporary numbness or altered sensation.

(B) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Accidental aspiration (into the lungs) of foreign matter.

(D) Rejection of donor materials.

(9) Pedicle soft tissue graft procedure.

(A) Permanent or temporary numbness or altered sensation.

(B) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Rejection of donor materials.

(10) Free soft tissue graft protection, [-]including donor site surgery.

(A) Permanent or temporary numbness or altered sensation.

(B) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Rejection of graft.

(11) Sub epithelial connective tissue graft procedures.

(A) Permanent or temporary numbness or altered sensation.

(B) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Rejection of graft.

(12) Distal or proximal wedge procedure (taking off gum tissue from the very back of the last tooth or between teeth): shrinkage[: ~~Shrinkage~~] of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(13) Soft tissue allograft and connective tissue double pedicle graft from below (creates or augments gum tissue).

(A) Permanent or temporary numbness or altered sensation.

(B) Tooth sensitivity to hot, cold, sweet, or acid foods.

(C) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(d) Implant procedures.

(1) Bone grafting (replacing missing bone).

(A) Permanent or temporary numbness or altered sensation.

(B) Rejection of bone particles or graft from donor or recipient sites.

(C) Damage to adjacent teeth or bone.

(2) Surgical placement of implant body.

(A) Blood vessel or nerve injury.

(B) Damage to adjacent teeth or bone fracture.

(C) Sinus communication (opening from tooth socket into the sinus cavity).

(D) Failure of implant requiring corrective surgery.

(E) Cyst formation, bone loss, or gum disease around the implant.

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

Filed with the Office of the Secretary of State on September 1, 2026.

TRD-202603795
Dr. Noah Appel
Panel Chair
Texas Medical Disclosure Panel
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 438-2889

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CHAPTER 603. PROCEDURES REQUIRING NO DISCLOSURE OF SPECIFIC RISKS AND HAZARDS--LIST B

25 TAC §603.6, §603.14

The Texas Medical Disclosure Panel (Panel) proposes amendments to §603.6, concerning Eye Treatments and Procedures, and §603.14, concerning Radiology Treatments and Procedures.

BACKGROUND AND PURPOSE

The purpose of this proposal is to revise the list of procedures that do not require disclosure of specific risks and hazards, and to use plain language when possible.

The proposed amendments are in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to patients or persons authorized to consent for patients and to establish the general form and substance of such disclosure.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §603.6 revises the types of eye treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with the eye treatments and procedures, and includes plain language explanations, where necessary.

The proposed amendment to §603.14 revises the types of radiology treatments and procedures that the Panel has determined require no disclosure of the risks and hazards associated with the radiology treatments and procedures and corrects the spelling of "laryngography."

FISCAL NOTE

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the Panel has insufficient information to determine the proposed rules' effect on the state's economy.

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

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

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

The Panel is unable to provide an estimate of the number of small businesses and micro businesses affected.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Dr. Noah Appel has determined that for each year of the first five years the rules are in effect, the public benefit will be improved consistency and clarity in this chapter of the Texas Administrative Code.

Dr. Noah Appel has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rules, as well as any applicable data, research, or analysis, may be submitted to Kelli Weldon, TMDP Liaison, Texas Health and Human Services Commission, P.O. Box 149030, Mail Code E-249, Austin, Texas 78714-9030; or emailed to HHSC_TMDP@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed TMDP Revisions to Chapter 603" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

The amendments implement Texas Civil Practice and Remedies Code Chapter 74, Subchapter C.

§603.6. Eye Treatments and Procedures.

(a) Administration of topical, parenteral (such as IV), or oral drugs or pharmaceuticals, including[~~, but not limited to,~~] fluorescein angiography[~~, orbital injection or periocular injections~~].

(b) Removal of extraocular (outside the eye) foreign bodies.

(c) Chalazion excision (removal of lump on eyelid).

(d) Dacrocystography, stenting of tear duct (injection of contrast into tear duct, placement of stent into tear duct).

§603.14. Radiology Treatments and Procedures.

[~~(a) Lymphangiography.~~]

(a) [~~(b)~~] Discography.

(b) [~~(c)~~] Lumbar puncture with/without injection of medication.

[~~(d) Nerve root injection, epidural injection, nerve blocks, and radiofrequency treatments for pain control.~~]

(c) [~~(e)~~] Venography (Venogram) with contrast media by peripheral IV.

(d) [~~(f)~~] Cholangiography with contrast media through existing drain; T-tube cholangiography.

(e) [~~(g)~~] Urography (IVP) with contrast media.

(f) [~~(h)~~] Radionuclide scans and/or blood flow studies.

(g) [~~(i)~~] Gastrointestinal (GI) tract radiography and fluoroscopy.

(h) [~~(j)~~] Nasogastric/nasojejunal tube placement with fluoroscopy.

[~~(k) Percutaneous gastrostomy/gastrojejunostomy.~~]

(i) [~~(l)~~] Fistula or sinus tract injection.

(j) [~~(m)~~] Sialography.

~~[(n) Dacryocystography, stenting.]~~

(k) [~~(o)~~] Cystography, cystourethrography.

(l) [~~(p)~~] Retrograde and antegrade urography.

(m) [~~(q)~~] Laryngography [~~Larynogography~~], bronchography.

(n) [~~(r)~~] Hysterosalpingography.

~~[(s) ERCP (Endoscopic retrograde cholangio pancreatography).]~~

(o) [~~(t)~~] Galactography.

(p) [~~(u)~~] Skeletal radiography and/or fluoroscopy (skull, mastoids, sinuses and facial bones; spine, ribs, pelvis; extremities).

(q) [~~(v)~~] Foreign body radiography and/or fluoroscopy and foreign body retrieval.

(r) [~~(w)~~] Chest and abdomen radiography and fluoroscopy.

(s) [~~(x)~~] Portable radiography/fluoroscopy.

(t) [~~(y)~~] Pelvimetry, fetogram.

(u) [~~(z)~~] Magnetic Resonance Imaging/Magnetic Resonance Angiography without and with contrast.

(v) [~~(aa)~~] Computed tomography scan/computed tomography angiogram without and with contrast media.

(w) [~~(bb)~~] Ultrasound and Doppler studies.

(x) [~~(cc)~~] Laminography, polytomography.

(y) [~~(dd)~~] Soft-tissue radiography, including xeroradiography and xeromammography.

(z) [~~(ee)~~] Arthrography, arthrocentesis, tenography.

~~[(ff) Ureteral or urethral balloon dilatation/stent.]~~

~~[(gg) Percutaneous suprapubic cystostomy.]~~

(aa) [~~(hh)~~] Cyst aspiration/drainage/sclerosis.

(bb) [~~(ii)~~] Percutaneous or transvascular biopsy.

(cc) [~~(jj)~~] Paracentesis.

(dd) [~~(kk)~~] Thoracentesis.

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

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Dr. Noah Appel
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Texas Medical Disclosure Panel
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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 26 TAC §558.602(h)(2)(D) and §558.602(h)(2)(D) are not included in the print version of the Texas Register. The figure is available in the on-line version of the September 18, 2026, issue of the Texas Register.)

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC), Title 26, Chapter 558, concerning Licensing Standards for Home and Community Support Services Agencies, amendments to §§558.1 - 558.3, 558.11, 558.13, 558.15, 558.17, 558.19, 558.21, 558.23, 558.25, 558.27, 558.29, 558.30, 558.208, 558.210, 558.211, 558.213 - 558.220, 558.242 - 558.250, 558.252, 558.256, 558.257, 558.259, 558.260, 558.281 - 558.283, 558.285, 558.287 - 558.292, 558.295, 558.297, 558.321, 558.322, 558.401, 558.404, 558.405, 558.501, 558.503, 558.507, 558.521, 558.523, 558.525, 558.601, 558.602, 558.604, 558.701, 558.801, 558.812, 558.823, 558.834, 558.843, 558.857, 558.859, 558.861 - 558.863, 558.870, and 558.880; new §§558.251, 558.261, 558.304, 558.323, 558.330, 558.332, 558.334, 558.336, 558.338, 558.510, 558.527, 558.529, 558.914, 558.916, 558.918, 558.928, 558.930, 558.932, 558.936, 558.940, 558.942, 559.944, 558.946, 558.948, and 558.950; and the repeal of §§558.251, 558.527, and 558.871.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (HB) 1009, HB 4696, Senate Bill (SB) 240, and SB 1849 enacted during the 88th Legislature, Regular Session, 2023, and SB 463 enacted during the 89th Legislature, Regular Session, 2025, to prescribe and streamline HHSC's process for investigating allegations of abuse, neglect, and exploitation of clients, and to ensure the rules reflect current industry practices and changes in service delivery models, licensure requirements, and enforcement procedures. The proposal also updates citations to the Texas Government Code as modified by HB 4611, 88th Legislature, Regular Session, 2023. HB 4611 made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. The updated citations became effective on April 1, 2025.

HB 1009 created Texas Health and Safety Code §253.0025 to require a home and community support services agency (HCSSA or agency) to suspend the employment of an unlicensed employee whom HHSC finds has engaged in reportable conduct while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review.

HB 4696 amended Texas Human Resources Code §48.252 to require allegations of abuse, neglect, and exploitation to be reported to HHSC rather than the Texas Department of Family and Protective Services (DFPS). HB 4696 also amended Texas Health and Safety Code §142.009(j) to state that a survey may (rather than must) be conducted within 18 months after a survey for an initial license and deleted the requirement that this visit must be made on-site.

SB 240 created Texas Health and Safety Code Chapter 331, to require a HCSSA providing licensed home health services to have a policy and prevention plan related to workplace violence if the HCSSA employs more than two registered nurses.

SB 463 amended Texas Health and Safety Code Chapter 331 to state that all HCSSAs must have a policy and prevention plan related to workplace violence if they employ two or more registered nurses.

SB 1849 created Texas Health and Safety Code Chapter 810, and with it the Interagency Reportable Conduct Search Engine, which is being implemented under the name Search Engine for Multiple Agency Reportable Conduct (SEMARC).

The proposal also deletes or updates obsolete references and contains non-substantive changes to improve readability and formatting.

SECTION-BY-SECTION SUMMARY

Edits are made throughout the chapter to delete or update references and non-substantive edits are made to improve readability and formatting.

Subchapter A, General Provisions

The proposed amendment to §558.1, Purpose and Scope, adds Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, as additional statutes that will be implemented by the rules.

The proposed amendment to §558.2, Definitions, adds definitions for terms and amends current definitions to clarify and define terms to reflect current industry practices and changes in service delivery models, licensure requirements, and enforcement procedures. The proposed amendment removes outdated or obsolete citations and references.

The proposed amendment to §558.3, License Fees, removes all the renewal license fees for a two-year license because now all renewal license fees are for a three-year license. The amendment updates the fee for an initial alternate delivery site license that includes a change of ownership from $1,000 to $1,500 to be consistent with the statutory three-year license term instead of the former two-year license term. The amendment also maintains consistency throughout the rules and promotes modernization by requiring applicants to submit applications and payment for licensure via the online portal.

Subchapter B, Criteria and Eligibility, Application Procedures, and Issuance of a License

The proposed amendment to §558.11, Criteria and Eligibility for Licensing, adds language to reflect changes in §558.604, related to licensure surrender, and allows HHSC to deny an application for an initial license or for renewal of a license if a person described in the rule, in the 12 months preceding the date of the application, has a history in any state or other jurisdiction of willfully operating an agency without a valid and active license.

The proposed amendment to §558.13, Obtaining an Initial License, adds language stating that an applicant may request to be licensed in any combination of the listed categories of services to ensure that the applicant is aware that it is not limited on which combination of services it may provide.

The proposed amendment to §558.15, Issuance of an Initial License, corrects references.

The proposed amendment to §558.17, Application Procedures for a Renewal License, updates references.

The proposed amendment to §558.19, Issuance of a Renewal License, removes extraneous language from subsections (b) and (c). The amendment removes existing subsections (e) and (f) that reference licensure expiration dates between December 31, 2020, and January 1, 2023, as these dates have passed. Removing existing subsections (e) and (f) also removes references to two-year license terms because now all license terms are three years. The amendment to subsection (a) removes references to subsections (e) and (f) that are proposed for removal.

The proposed amendment to §558.21, Denial of an Application or a License, adds that HHSC may deny a licensure application for a hospice inpatient unit that fails to meet the licensure requirements of a Life Safety Code inspection. Continued failure to meet the licensure requirements within 120 days after the initial Life Safety Code inspection will result in a proposed denial of the license and a referral of the application to HHSC Regulatory Enforcement.

The proposed amendment to §558.23, Change of Ownership, clarifies that the current license holder maintains responsibility under its license between the effective date of the change of ownership and the issuance of an initial license to the change of ownership applicant, who may operate the agency on behalf of the current license holder during such time period.

The proposed amendment to §558.25, Requirements for Change of Ownership, replaces a reference to "an initial license application" with a reference to "a change of ownership license application" to clarify the type of application that must be submitted. The amendment specifies what a complete change of ownership application includes. The amendment clarifies that a change of ownership license application is submitted through the online portal to be consistent with this same requirement in other rules for submitting a license application. The amendment also makes non-substantive changes to improve readability and clarity.

The proposed amendment to §558.27, Application and Issuance of an Initial Branch Office License, clarifies who is responsible for denying applications for licensure. The amendment also deletes extraneous language and corrects a grammatical error.

The proposed amendment to §558.29, Application and Issuance of an Alternate Delivery Site License, provides additional guidance regarding notification of readiness for a Life Safety Code survey and specifies that an agency must not admit Medicare beneficiaries before receiving Centers for Medicare & Medicaid Services (CMS) approval, and outlines exemptions and guidance related to the accreditation process. The amendment also updates a reference.

The proposed amendment to §558.30, Operation of an Inpatient Unit at a Parent Agency, updates the section title to "Operation of a Hospice Unit at a Parent Agency." The amendment adds that an applicant for an initial license to provide hospice services must not have an enforcement action pending against the license. The amendment adds that before HHSC considers whether the application is complete, HHSC determines if the agency is in compliance with the Life Safety Code Requirements in proposed new Division 9 under Subchapter H. The amendment requires the agency, after HHSC issues a license authorizing the hospice inpatient unit, to admit and provide services to a client, and unless exempt as described in the rule, to submit a request for an initial health survey. The proposed amendment

also requires an agency to submit the Notification of Readiness for a Health Survey (HHSC Form 2020), in place of Notification of Readiness for a Health Survey (HHSC Form 2020-A).

Subchapter C, Minimum Standards for All Home and Community Support Services Agencies

Division 2, Conditions of a License

The proposed amendment to §558.208, Reporting Changes in Application Information and Fees, updates language to reflect that applications may be submitted online and requires an agency to report a change in accreditation status after HHSC issues a license. The amendment updates the rule by adding that the application required to report a change must be submitted through the online portal. The amendment clarifies a reference and makes non-substantive edits for clarity.

The proposed amendment to §558.210, Agency Operating Hours, updates the section title to "Agency Place of Business and Operating Hours." The amendment specifies parameters and limitations for an agency's place of business and describes the requirements that must be met if the place of business is in a co-working workspace. Additionally, the proposed language outlines the requirements for what must be displayed on an agency's notice or sign.

The proposed amendment to §558.211, Display of License, clarifies that the most current license must be displayed in each place of business. If the information on the license is officially amended, the agency will receive a new license to reflect the changes, which must be posted to provide public notice of the change.

The proposed amendment to §558.213, Agency Relocation, clarifies the procedure for reporting a change in physical location to now specify that a relocation application must be submitted through the online portal. The amendment describes the requirements for an agency with a hospice inpatient unit to relocate the unit. The amendment makes non-substantive changes to improve readability.

The proposed amendment to §558.214, Notification Procedures for a Change in Agency Contact Information and Operating Hours, adds the requirement to submit applications through the online portal to maintain consistency throughout the rules and promote modernization.

The proposed amendment to §558.215, Notification Procedures for an Agency Name Change, adds the requirement to submit applications through the online portal to maintain consistency throughout the rules and promote modernization. The amendment also makes non-substantive changes to improve readability.

The proposed amendment to §558.216, Change in Agency Certification Status, adds a provision regarding the procedures when an agency voluntarily withdraws from the Medicare program but continues to provide services under a licensed-only category, such as licensed home health, hospice, or personal assistance services. The amendment also clarifies that a written notice of voluntary closure must be included if an agency voluntarily withdraws from the Medicare program based on permanent closure.

The proposed amendment to §558.217, Agency Closure Procedures and Voluntary Suspension of Operations, adds guidance about how an agency must notify HHSC of closure or voluntary suspension, instructions regarding how to preserve client records in the event of a closure or voluntary suspension, the consequences an agency will face should it fail to comply with the section, and how an agency may resume operations following a voluntary suspension of operations. The amendment also updates references.

The proposed amendment to §558.218, Agency Organizational Changes, updates language to reflect application submission options via online methods. The amendment updates a reference.

The proposed amendment to §558.219, Procedures for Adding or Deleting a Category to the License, clarifies which HHSC unit is responsible for approving and denying applications that request to add or delete categories of service to a license. The amendment specifies that an agency must not provide services before receiving an updated license with the new category of service listed.

The proposed amendment to §558.220, Service Areas, updates language to reflect application submission options via online methods, provides clarification to providing services to clients who reside outside of a licensed service area, incorporates language regarding compliance when providing teleservices and specifies the location requirements for branch offices or alternate delivery sites.

Subchapter C, Minimum Standards for All Home and Community Support Services Agencies

Division 3, Agency Administration

The proposed amendment to §558.242, Organizational Structure and Lines of Authority, clarifies which positions may be considered a controlling person in the agency's organizational structure.

The proposed amendment to §558.243, Administrative and Supervisory Responsibilities, updates language to reflect application submission options via online methods, updates language to include when a license holder with multiple categories of services may share a single administrator and alternate administrator and explains date of designation. The amendment updates language to include that it is the administrator's responsibility to develop and implement an acceptable plan of correction in response to cited deficiencies and violations. The amendment incorporates telecommunications as a method through which the supervising or alternate supervising nurse may be available to agency personnel. The amendment further updates language to ensure compliance with Texas Health and Safety Code Chapter 331 regarding a written workplace violence prevention policy and plan and the establishment of a workplace violence prevention committee and updates references. The amendment also implements language from SB 240 stating that agencies providing licensed home health services that employ two or more nurses must adopt, implement, and enforce a written workplace violence prevention policy and plan and a committee to oversee it.

The proposed amendment to §558.244, Administrator Qualifications and Conditions and Supervising Nurse Qualifications, adds presurvey training completion deadlines before the date of designation for an administrator and alternate administrator and details who is required to complete the presurvey training. The amendment prohibits the employability of an administrator or alternate administrator who has been involved in a final enforcement action by HHSC. The amendment defines the terms "period of time" and "enforcement action" for the purposes of the

section. The amendment details when enforcement action is to take effect should an agency appeal enforcement action.

The proposed amendment to §558.245, Staffing Policies, updates language to require that an agency's written staffing procedures include a process for searches of the medication aide registry (MAR), if applicable, and the SEMARC, in addition to the nurse aide registry (NAR). The amendment also clarifies that evaluation of competencies may be performed via telecommunications for purposes of compliance. The amendment also states that agency training may be conducted virtually with competencies demonstrated and evaluated in person.

The proposed amendment to §558.246, Personnel Records, updates language to clarify that personnel records are required for all employees and volunteers regardless of position and details what documentation personnel records must contain. The amendment also updates language to state that personnel records for an unlicensed employee or unlicensed volunteer whose duties would or do include contact with a client must include a printed or electronic copy of the results of the initial and annual searches of the MAR, if applicable, and the SEMARC established under Texas Health and Safety Code Chapter 810, in addition to the NAR. Updated language specifies that the rule is in accordance with §558.305, Standards for Electronic Record Maintenance and Storage; §558.259, Initial Educational Training in Administration of Agencies; and §558.260, Continuing Education in Administration of Agencies.

The proposed amendment to §558.247, Verification of Employability and Use of Unlicensed Persons, updates the section title to "Verification of Employability and Use of Persons as Employees, Volunteers, and Contractors." The amendment clarifies how an agency must conduct initial and annual verifications of employability for a person, including a check of the SEMARC, MAR, if applicable, and NAR and specifies the requirements of an initial criminal history check. The amendment implements Texas Health and Safety Code Chapter 810, which requires a HCSSA, as a designated user under §810.004(b)(1)(A), to conduct a search of SEMARC to determine whether an individual who may have access to a client has engaged in reportable conduct and, if the individual has engaged in reportable conduct, whether the individual is ineligible for employment, a volunteer position, or a contract with the agency. The amendment implements Texas Health and Safety Code §253.0025 in §558.247(h)(7) by adding the requirement for an agency to suspend the employment or contract of a person whom has engaged in reportable conduct while the person exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review conducted in accordance with Texas Health and Safety Code §253.004 or §253.005, pending a final decision by an administrative law judge. The updated language also provides guidelines for hiring on a temporary or interim basis in an emergency when background checks are pending and provides the criteria for the immediate hire as permitted by Texas Health and Safety Code Chapter 250. The amendment deletes language that is outdated.

The proposed amendment to §558.248, Volunteers, provides guidance on which roles agencies can place volunteers in.

The proposed amendment to §558.249, Self-Reported Incidents of Abuse, Neglect, and Exploitation, updates the section title to "Incidents of Abuse, Neglect, and Exploitation." The amendment deletes the requirement for an agency to report abuse, neglect, and exploitation to DFPS and instead requires reporting to HHSC. Additionally, the definitions for "abuse," "neglect," and "exploitation" have been included in the definitions section §558.2; therefore, the amendment deletes the references to 26 TAC Chapter 711 and 40 TAC Chapter 705 that initially assigned meanings to those definitions. The proposed amendment also clarifies that to report abuse "immediately" means to report it no later than one hour after suspecting or learning of the incident.

The proposed amendment to §558.250, Agency Investigations, clarifies what information must be included in the HHSC Provider Investigation Report and includes two examples of retaliatory actions.

Proposed new §558.251, Reporting Abuse, Neglect, and Exploitation, requires each employee, contractor, volunteer, client, and legally authorized representative be trained and are knowledgeable on how to protect from and report abuse, neglect, and exploitation (ANE). The rule further states that each employee, contractor, and volunteer sign an acknowledgement that clients are to be free from ANE and that each employee, contractor, and volunteer understand that they may be criminally liable under Texas Human Resources Code Chapter 48 for failure to report suspected ANE.

The proposed repeal of §558.251 deletes the rule as no longer necessary because the content of the rule has been added to proposed new §558.261 and will allow for proposed new §558.251, Reporting Abuse, Neglect, and Exploitation.

The proposed amendment to §558.252, Financial Solvency and Business Records, clarifies that an agency must have sufficient funds to cover all planned services for clients receiving care. The amendment specifies that an agency must maintain business records either in hardcopy or electric form.

The proposed amendment to §558.256, Emergency Preparedness Planning and Implementation, clarifies the requirement that if a client, whom the agency identifies may need evacuation assistance, wants to register with the State of Texas Emergency Assistance Registry (STEAR), the agency must provide the client with the amount of assistance the client requests to complete the registration process for evacuation assistance if STEAR is available in the service area. The amendment removes the option to fax information and updates a reference.

The proposed amendment to §558.257, Medicare Certification Optional, clarifies the requirement that HHSC must receive written approval from CMS via the Medicare Administrative Contractor before amending the licensing status of an agency to include certified home health services to its category of service and before HHSC entering the hospice provider number into the online portal.

The proposed amendment to §558.259, Initial Educational Training in Administration of Agencies, clarifies that the section applies to all newly designated administrators and alternate administrators. The proposed amendment specifies who is considered a newly designated administrator or alternate administrator, outlines the timeframe to complete the 24 hours of educational training, and clarifies the agency's requirement for documentation of administrator and alternate administrator training. The amendment removes language stating the initial educational training must be approved by HHSC or recognized by a state or national organization or association.

The proposed amendment to §558.260, Continuing Education in Administration of Agencies, clarifies that the section applies to all administrators and alternate administrators in the second through subsequent years of designation to the position. The

proposed amendment specifies that an administrator or alternate administrator with a break in designation longer than 12 months from the date of the administrator or alternate administrator's last designation to the position is considered a newly designated administrator and clarifies the requirements for what topics the 12 hours of continuing education must include. The amendment also deletes language that is outdated.

Proposed new §558.261, Peer Review, moves the repealed peer review language from §558.251 into this section. This was done to allow the new §558.251, Reporting Abuse, Neglect and Exploitation to follow §558.249, Incidents of Abuse, Neglect and Exploitation and §558.250, Agency Investigations.

Subchapter C, Minimum Standards for All Home and Community Support Services Agencies

Division 4, Provision and Coordination of Treatment Services

The proposed amendment to §558.281, Client Care Policies, provides clarity to the elements that must be included in the agency's written policy that specifies client care practices.

The proposed amendment to §558.282, Client Conduct and Responsibility and Client Rights, adds a provision that at the time of admission, an agency must provide the client a handout regarding the client's rights. The amendment also adds clarity to some of the provisions outlined for client rights.

The proposed amendment to §558.283, Advance Directives, adds clarity to provisions that outline what must be included in a written policy regarding implementation of advance directives. The amendment also removes the provision that assesses a $500 administrative penalty for a violation of this section without an opportunity to correct.

The proposed amendment to §558.285, Infection Control, adds a provision that an agency's written infection control policy must address measures the agency will take to prevent the spread of communicable and infectious diseases, including the usage of personal protective equipment. The proposed amendment also states that an agency must designate an infection control officer and outlines what is required of the job position.

The proposed amendment to §558.287, Quality Assessment and Performance Improvement, adds clarity to provisions that outline what must be included in the quality assessment and performance improvement (QAPI) program and the frequency of the QAPI Committee meeting.

The proposed amendment to §558.288, Coordination of Services, states that coordination of services among an agency and all providers of teleservices must be included in an agency's adopted and enforced written policy. The proposed amendment also provides that if the agency will provide temporary services for a client who is traveling, it must adopt and enforce a written policy regarding the coordination of service delivery on a temporary basis.

The proposed amendment to §558.289, Independent Contractors and Arranged Services, adds a requirement to ensure that the agency or the contracting agency or organization conduct MAR, NAR, and SEMARC checks of unlicensed persons. The amendment also updates a reference.

The proposed amendment to §558.290, Backup Services and After-Hours Care, clarifies that for the purposes of this section, a client's designee is the individual that the client or client's legally authorized representative determines can provide services when the agency is unable to provide an employee, volunteer, or contractor. The proposed language clarifies the requirements for an agency's written policy to ensure that backup services are available when an agency employee or contractor is not available to deliver the services. The amendment also adds provisions related to when an agency must offer backup services.

The proposed amendment to §558.291, Agency Dissolution, updates a reference.

The proposed amendment to §558.292, Agency and Client Agreement and Disclosure, requires that a client's legally authorized representative also be provided a written agreement of services. The amendment also updates a reference.

The proposed amendment to §558.295, Client Transfer or Discharge Notification Requirements, updates language to specify that in the event of a discharge the agency must notify the client's primary care physician and includes that written notification may be provided via electronic correspondence that complies with the Health Insurance Portability and Accountability Act.

The proposed amendment to §558.297, Receipt of Physician Orders, updates the section title to "Receipt of Practitioner Orders." The amendment updates language to include practitioner. The amendment incorporates secure electronic transmission as a means to accept physician or practitioner orders.

Proposed new §558.304, Standards for Electronic Record Maintenance and Storage, adds language to ensure agencies maintain accuracy and confidentiality of electronic records and establish a system or arrangement for preservation of inactive electronic records.

Subchapter C, Minimum Standards for All Home and Community Support Services Agencies

Division 5, Branch Offices and Alternate Delivery Sites

The proposed amendment to §558.321, Standards for Branch Offices, updates language to incorporate online submission methods and states that all electronic records must be maintained in accordance with §558.305. The amendment also states that supervisory visits may be completed virtually with at least one on-site visit conducted quarterly and that all agency policy and procedures be readily accessible to both the parent agency and branch office.

The proposed amendment to §558.322, Standards for Alternate Delivery Sites, provides that all electronic records must be maintained in accordance with §558.305 and corrects a grammatical error.

Proposed new §558.323, Standards for Administrative Support Sites, states that a parent agency is responsible for ensuring that its administrative support site complies with licensing standards. The language outlines the reasons an administrative support site does not require a license or fee and specifies that should it deliver any home health, hospice, or personal assistance services from the location, it will be considered an operating a branch or alternate delivery site. The rule outlines which administrative office and support functions may be and must not be conducted from the administrative support site.

Subchapter C, Minimum Standards for All Home and Community Support Services Agencies

Division 6, Telehealth, Telemedicine, Telemonitoring, and Telecommunication

Proposed new Division 6 under Subchapter C, Telehealth, Telemedicine, Telemonitoring, and Telecommunication, outlines

the applicability and general standards for an agency providing services via telehealth, telemedicine, telemonitoring, and telecommunications, also referred to throughout Subchapter C as teleservices.

Proposed new §558.330, Applicability, states that for an agency to provide teleservices, it must be licensed as a home health, licensed, and certified home health, or hospice category of service. The proposed rule also states that an agency cannot provide teleservices and be licensed with a category of personal assistance services only. The proposed rule also states that agencies that provide teleservices must identify the extent to which the services will be utilized in the admission agreement.

Proposed new §558.332, General Standards for Teleservices, states that an agency must evaluate the client, family supports, and environment to determine if teleservices are appropriate for and in line with the client's needs and goals of care and provides what that evaluation must include. The rule specifies that an agency conducting a client's initial assessment, comprehensive assessment, or reassessment must ensure all aspects of the assessment can be accurately evaluated via teleservices and that if risk is identified to the client's health or safety during an assessment via teleservices, then an in-home visit must be completed. The rule states that employees and contractors who provide teleservices must meet all conditions for employment or contracting in accordance with §558.245. The rule specifies that teleservices must be conducted in a language and manner the client can understand, which may require the agency locate and coordinate with an interpreter or translator. The rule outlines how an agency must initially evaluate if teleservices are appropriate for a client and includes what an agency must assess in its annual evaluations of the teleservices program. The rule details that the agency must not require that the client accept teleservices if the client's preferred service delivery method is in-person and in-person services are available. The rule specifies that if the client's needs and goals are not being met using teleservices, then the agency must reevaluate the service delivery method for that client. The rule details that if an agency is unable to meet a client's needs, it must document its concerns and follow transfer and discharge requirements as applicable. The rule states that an agency must adopt and enforce policies and procedures related to the use of teleservices and identify who must be trained on the policies and procedures and how often they must complete the training.

Proposed new §558.334, Standards for Telehealth and Telemedicine, states that agency staff or contractors providing telemedicine and telehealth services must follow any state and federal requirements regarding the use of these services as dictated by the agency staff or contractors' applicable licensing boards, Texas Occupations Code, or TAC. The rule also states that agency staff or contractors providing telemedicine or telehealth services must maintain confidentiality of protected health information per federal and state law.

Proposed new §558.336, Standards for Telemonitoring, states that telemonitoring must be ordered by the primary care physician and must include the condition to be monitored, how often it must be monitored, any applicable parameters, and any additional instructions required as part of the telemonitoring. The rule states that the agency must adopt and enforce a policy for the delivery, installation, maintenance, and monitoring of the telemonitoring equipment. The rule requires the agency to comply with §558.247 and §558.289 if the agency uses contractor services to provide equipment delivery, installation, maintenance, or monitoring. The proposed rule outlines who the agency must provide education to on the use of home telemonitoring equipment. The rule states that a registered nurse must review any transmitted clinical data at intervals consistent with the client's needs and goals set by his or her physician, but provides that the agency may use a licensed vocational nurse to assist the registered nurse in providing nursing telemonitoring services. The rule requires the agency to maintain documentation of telemonitoring visits and data and establishes the need for further evaluation of goals and outcomes in the client's record, in addition to the requirements in §558.301.

Proposed new §558.338, Standards for Telecommunications, states that agency policies, procedures, contracting agreements, medical records, practitioner's orders, and arranged services agreements may be sent and received electronically. The rule states if an agency provides client admission, discharge, or required notifications via telecommunication or electronic correspondence, it must confirm receipt of the information with the client or the client's legally authorized representative. The language outlines which documents and notifications can be provided via telecommunications or electronic correspondence and the requirements that must be met should the agency choose to communicate this way.

Subchapter D, Additional Standards Specific to License Category and Specific to Special Services

The proposed amendment to §558.401, Standards Specific to Licensed Home Health Services, updates the rule to specify what the admission of a client must be based on and provides that it is the responsibility of the agency to communicate with the client's primary care physician or practitioner regarding any needs the agency will be unable to meet. The amendment specifies that the initial health assessment may be performed either in-person or via teleservices. The amendment specifies that services must be based on the orders of the primary care physician or practitioner and details who must prepare a care plan when a practitioner has not ordered skilled care for a client. The amendment specifies who must be consulted in the development of the care plan.

The proposed amendment to §558.404, Standards Specific to Agencies Licensed to Provide Personal Assistance Services, updates the rule to include that a personal assistance services agency must not provide nursing or skilled services to its clients and that a registered nurse must not perform nursing tasks identified by the Nurse Practice Act §301.002 as part of personal assistance services. The amendment outlines the limitation of nursing services that are to be performed by a registered nurse employed by a personal assistance services agency and states that a registered nurse must ensure that skills performed by unlicensed personnel as part of tube feedings and medication administration through a permanently placed gastrostomy tube are completed as outlined by Texas Board of Nursing rules and the memorandum of understanding between HHSC and the Texas Board of Nursing. The amendment also states that a registered nurse may determine through an in-person assessment which health-related tasks do not require delegation and details the steps to be taken should the task require delegation.

The proposed amendment to §558.405, Standards Specific to Agencies Licensed to Provide Home Dialysis Services, adds language to include "practitioner" as well as primary care physician to maintain consistency within the rules. The amendment also updates a reference, corrects date errors, and deletes old language.

Subchapter E, Licensure Surveys

Division 1, General

The proposed amendment to §558.501, Survey and Investigation Frequency, provides that HHSC conducts a Life Safety Code survey before issuing a license for an initial parent agency or alternate delivery site with a category of hospice services with an inpatient unit and otherwise clarifies HHSC authority.

The proposed amendment to §558.503, Exemption From a Survey, updates the section title to "Accreditation Process and Exemption from a Survey." The amendment states that all accreditation organizations with current HHSC approval will be listed on the HCSSA website. The amendment outlines the requirements that an agency must meet if it seeks exemption from a licensing survey via accreditation and provides that the agency must maintain documentation of accreditation organization surveys and outcomes available to be reviewed by HHSC as necessary.

The proposed amendment to §558.507, Agency Cooperation with a Survey, updates references and makes minor editing changes.

Proposed new §558.510, Prioritization of Abuse, Neglect, and Exploitation Investigations, provides an explanation of prioritization timeframes for investigations of abuse, neglect, and exploitation. The new rule also provides an overview of the investigation process.

Subchapter E, Licensure Surveys

Division 2, The Survey Process

The proposed amendment updates the title of the subchapter to "Licensure Surveys and Investigations of Abuse, Neglect, and Exploitation"

The proposed amendment to §558.521, Requirements for an Initial Survey, states an agency's inability to receive payer source authorization or contract for services does not alleviate the agency's responsibility to submit the letter of readiness within the required six months. The amendment also clarifies when the agency must admit and provide hospice services, per category of service or designation, after the effective date of an agency's initial license. The proposed amendment also clarifies that HHSC may take enforcement action if an agency fails to admit and provide services to at least one client within six months of the issuance of an agency's initial license. The amendment removes subsection (g) because the information has been relocated in §558.503.

The proposed amendment to §558.523, Personnel Requirements for a Survey, clarifies existing language to update references and adds additional forms of communication that may be used to contact the administrator, alternate administrator, supervising nurse, or alternate supervising nurse.

The proposed amendment to §558.525, Survey Procedures, clarifies that during a survey, an HHSC representative conducts at least three visits to a hospice inpatient unit to determine compliance with licensing requirements and conducts interviews with clients, staff, contractors, volunteers, and others, as applicable.

Proposed new §558.527, Plan of Removal, states that during an on-site inspection, if HHSC finds that a violation has created an immediate threat to the health and safety of a client, the agency must submit a plan of removal. The amendment also outlines what the plan of removal must include.

The proposed repeal of §558.527, Post-Survey Procedures, deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §558.529 and will allow for the proposed new §558.527, Plan of Removal.

Proposed new §558.529, Post-Survey Procedures, relocates the rule from proposed repealed subsection of §558.527 with non-substantive editorial changes. The rule informs agencies on the post-survey procedures including protocols for the exit conference, identification of violations following the exit conference, plan of correction by the agency and requesting an informal dispute resolution.

Subchapter F, Enforcement

The proposed amendment to §558.601, Enforcement Actions, adds requirements an agency must follow upon dissolution. The amendment updates references and makes non-substantive editorial changes.

The proposed amendment to §558.602, Administrative Penalties, updates the Severity Level A and B Violations chart figures by revising the rule citations and subject matter based on the amendments, repeals, and new rules in this proposal. The amendment also updates references.

The proposed amendment to §558.604, Surrender or Expiration of a License, adds provisions clarifying the actions HHSC will take if the agency either surrenders its license or allows its license to expire in lieu of paying the administrative penalty.

Subchapter G, Home Health Aides

The proposed amendment to §558.701, Home Health Aides, updates language to include a pseudo-person for use during an aide's performance evaluation and adds that agency training may be conducted virtually so long as the registered nurse or licensed vocational nurse ensures competencies are demonstrated and evaluated in person.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 1, Hospice General Provisions

The proposed amendment to §558.801, Subchapter H Applicability, requires a statement be in the client's record to specify that the start of hospice care begins on the effective date.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 2, Initial and Comprehensive Assessment of a Hospice

The proposed amendment to §558.812, Update of the Hospice Comprehensive Assessment, provides that the hospice interdisciplinary team may meet in-person or virtually if virtual meetings are effective for the purpose of the discussion.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 3, Hospice Interdisciplinary Team, Care Planning, and Coordination of Services

The proposed amendment to §558.823, Coordination of Services by the Hospice, updates the rule to incorporate communication and integration via teleservices, which supports modernization.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 4, Hospice Core Services

The proposed amendment to §558.834, Hospice Counseling Services, makes a non-substantive edit.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 5, Hospice Non-Core Services

The proposed amendment to §558.843, Hospice Aide Qualifications, adds the option for a hospice aide to be evaluated by a registered nurse using a pseudo-person or person in addition to a client to maintain consistency with the rules.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 6, Hospice Organization and Administration of Services

The proposed amendment to §558.857, Hospice Staff Training, adds provisions clarifying what a hospice must include in its staff orientation training.

The proposed amendment to §558.859, Hospice Discharge or Transfer of Care, adds language to include "practitioner" to maintain consistency within the rules.

The proposed amendment to §558.861, Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in a Client's Home or Community Setting, adds language to include "practitioner" instead of physician to maintain consistency within the rules. "Physician assistant" and "prescribing practitioner" were also added to expand authority.

The proposed amendment to §558.862, Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in an Inpatient Hospice Unit, adds language to include "practitioner" instead of physician to maintain consistency within the rules and makes minor editing changes.

The proposed amendment to §558.863, Hospice Short-term Inpatient Care, updates references.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 7, Hospice Inpatient Units

The title of Division 7 is updated to "Inpatient Units."

The proposed amendment to §558.870, Staffing in a Hospice Inpatient Unit, includes non-substantive edits.

The proposed repeal of §558.871, Physical Environment in a Hospice Inpatient Unit, deletes the rule as no longer necessary because the content of the rule has been added to proposed new Division 9 under subchapter H.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 8, Hospices that Provide Hospice Care to Residents of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions

The proposed amendment to §558.880, Providing Hospice Care to a Resident of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions, includes non-substantive editorial changes.

Subchapter H, Standards Specific to Agencies Licensed to Provide Hospice Services

Division 9, Physical Environment in a Hospice Inpatient Unit

Proposed new §558.914, Safety Management, moves the repealed safety management language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section outlines the responsibility of the inpatient unit to identify possible dangers to the health and safety of clients, and to ensure the creation of a written disaster preparedness plan that includes procedures for designating the staff responsible for carrying out evacuation or sheltering in place protocols that are outlined in the section.

Proposed new §558.916, Physical Plant and Equipment, moves the repealed safety management language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section provides regulations regarding the disposal of trash and medical waste, light, temperature, ventilation, gas and water supply and scheduled and emergency maintenance for equipment.

Proposed new §558.918, Fire Protection, moves the repealed fire protection language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that the inpatient unit must meet the applicable requirements of the health care occupancy chapters in National Fire Protection Association, 101 and reflects updated National Fire Protection Association, Life Safety Code, 2012 edition (NFPA 101).

Proposed new §558.928, Client Areas, moves the repealed client areas language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that the inpatient unit must provide a home-like atmosphere and what that entails.

Proposed new §558.930, Client Rooms, moves the repealed client rooms language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that the inpatient unit must ensure that each client room is designed and equipped to support nursing care and to maintain the dignity, comfort, and privacy of each client when possible and what that entails.

Proposed new §558.932, Plumbing Facilities, moves the repealed plumbing facilities language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs inpatient unit that the inpatient unit must maintain a continuous

supply of hot water and install plumbing fixtures equipped with control valves designed to automatically regulate hot water temperatures for client use.

Proposed new §558.936, Infection Control, moves the repealed infection control language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs inpatient unit that the inpatient unit must have an infection control program designed to prevent and control infections and communicable diseases.

Proposed new §558.940, Sanitary Environment, moves the repealed sanitary environment language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that the inpatient unit must maintain a sanitary environment by following accepted standards of practice and prevent sources and transmission of infections and communicable diseases.

Proposed new §558.942, Linen, moves the repealed linen language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that the inpatient unit must maintain a sufficient supply of clean linen for client use at all times and that they must handle, transport, and store linens in a way that prevents the spread of contaminants.

Proposed new §558.944, Meal Service and Menu Planning, moves the repealed meal service and menu planning language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that the inpatient unit must provide meals for clients and outlines requirements for those meals.

Proposed new §558.946, Use of Restraint or Seclusion, moves the repealed use of restraint or seclusion language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that clients have the right to be free from restraint or seclusion and provides requirements for when and how restraint and seclusion may be used.

Proposed new §558.948, Restraint or Seclusion Staff Training Requirements, moves the repealed restraint or seclusion staff training requirements language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that the inpatient unit must ensure that client care staff are trained and able to demonstrate competency in the application of restraints and implementation of seclusions and what competencies they must demonstrate.

Proposed new §558.950, Death Reporting Requirements Associated with the Seclusion or Restraint in a Hospice Inpatient, moves the repealed death reporting requirements associated with the seclusion or restraint in a hospice inpatient language from §558.871 into this section. This is based on an HHSC initiative to structure the physical environment requirements for hospice inpatient by section for easy reference instead of listing all the requirements in one section as they were previously. This section informs the inpatient unit that the inpatient unit must report deaths associated with the use of restraint or seclusion and the protocols they must follow to do so.

FISCAL NOTE

Victoria Grady, Deputy Chief, Finance, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules there will be an estimated increase in revenue to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

There is an expected increase in revenue for state government due to the additional fees HHSC may collect from HCSSAs for security violations. The new security violations could result in a fee between $100 - $1000 per violation. However, HHSC is unable to determine the exact increase in revenue because it is unknown how many security violations will be assessed on HCSSAs and the range in fee amount varies based on the level of security violation.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules results in no assumed change in future legislative appropriations;

(4) the proposed rules will affect fees paid to HHSC;

(5) the proposed rules will create a new regulation;

(6) the proposed rules will expand and repeal existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

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

Victoria Grady has also determined that there could be an adverse economic effect on a HCSSA that is a small business, micro-business, or rural community. A HCSSA may incur a cost if the agency suspends an agency staff person while due process takes place for being reported to the SEMARC. A HCSSA may need to hire additional staff on a temporary basis while the staff person is on suspension. In addition, HCSSAs may incur additional fees for new security violations implemented as a result of the proposed rules.

HHSC lacks sufficient information to estimate the number of HCSSAs that are small businesses, micro-businesses, or rural communities.

HHSC determined that alternative methods to achieve the purpose of proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of persons receiving services from a HCSSA and because the content of the rule is necessary to implement HB 1009.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

David Kostroun, Chief Regulatory Services Officer, has determined that for each year of the first five years the rules are in effect, the public benefit will be the clear and efficient process for applying for a HCSSA license, clarification of regulations related to teleservices and electronic records, and use of updated citations to reflect current industry practices.

Victoria Grady has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because suspending an agency staff person while the person goes through due process may require a HCSSA to hire additional staff on a temporary basis while the staff person is on suspension. In addition, HCSSAs may incur additional fees for new security violations implemented as a result of the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R045" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §§558.1 - 558.3

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.1. Purpose and Scope.

(a) Purpose.

(1) The purpose of this chapter is to implement:

(A) [~~implement~~] Texas Health and Safety Code[~~,~~] Chapter 142, which requires the Texas Health and Human Services Commission (HHSC) to adopt minimum standards that a person must meet in order to be licensed as a home and community support services agency (HCSSA) and also to qualify to provide certified home health services; these[~~. The~~] requirements serve as a basis for licensure and survey activities.

(B) Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, concerning HHSC investigations of alleged abuse, neglect, and exploitation of HCSSA clients.

(2) Except as provided by Texas Health and Safety Code §142.003 [~~(relating to Exemptions from Licensing Requirement)~~], a person, including a health care facility licensed under the Texas Health and Safety Code, may not engage in the business of providing home health, hospice, or personal assistance services (PAS), or represent to the public that the person is a provider of home health, hospice, or PAS for pay without a HCSSA license authorizing the person to perform those services issued by HHSC for each place of business from which home health, hospice, or PAS is directed. A certified HCSSA must have a license to provide certified home health services.

(b) Scope. This chapter establishes the minimum standards for acceptable quality of care. A violation of a minimum standard established by Texas Health and Safety Code Chapter 142, or by a rule adopted under that chapter, is a violation of law. The rules in this chapter are adopted to protect clients of HCSSAs by establishing minimum standards relating to quality of care and quality of life.

(c) Limitations. Requirements established by private or public funding sources such as health maintenance organizations or other private third-party insurance, Medicaid (42 United States Code (U.S.C.) [~~(USC)~~] Chapter 7, Subchapter XIX), Medicare (42 U.S.C [~~USC~~] Chapter 7, Subchapter XVIII), or state-sponsored funding programs are separate and apart from the requirements in this chapter for agencies. No matter what funding sources or requirements apply to an agency, the agency must still comply with the applicable provisions in the statute [~~Statute~~] and this chapter. The agency is responsible for researching availability of any funding source to cover a service provided by the agency.

§558.2. Definitions.

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

(1) Abuse--Physical, sexual, emotional, verbal, or psychological abuse, as those terms are defined in this section.

(2) [~~(1)~~] Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(3) Accident--An unexpected or unintentional event that may or may not result in injury or illness to a client. An accident does not include other types of harm, such as adverse outcomes that result directly from treatment or care provided in accordance with current professional standards of practice, such as drug side effects or reactions.

(4) [~~(2)~~] Accreditation organization--An accrediting entity approved by HHSC that shows its accreditation standards meet or are higher than the rule requirements for licensing under Texas Health and Safety Code Chapter 142 and this chapter. The entity reviews a HCSSA to ensure the HCSSA follows the accreditation organization's standards for the HCSSA's licensed service category. [~~The Joint Commission, Community Health Accreditation Partner, Accreditation Commission for Health Care, Inc., or another accrediting entity approved by HHSC that demonstrates it meets or exceeds applicable rule requirements of this chapter. The entity reviews HCSSAs for compliance with standards for accreditation by the organization that apply to a HCSSA's licensed category of service.~~]

(5) [~~(3)~~] Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including:

(A) the calculation of a client's medication dosage;

(B) altering the form of the medication by crushing, dissolving, or any other method;

(C) reconstitution of an injectable medication;

(D) drawing an injectable medication into a syringe;

(E) preparing an intravenous admixture; or

(F) any other act required to render the medication ready for administration.

(6) [~~(4)~~] Administrative support site--A facility or site (also referred to as a drop site) where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(7) [~~(5)~~] Administrator--The person who is responsible for implementing and supervising the administrative policies [~~polices~~] and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(8) [~~(6)~~] ADS--Alternate delivery site. A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's parent agency;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(9) [~~(7)~~] Advanced practice nurse--An advanced practice registered nurse.

(10) [~~(8)~~] Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse. The term is synonymous with "advanced practice nurse."

(11) [~~(9)~~] Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(12) [~~(10)~~] Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--[~~means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;~~]

(i) each officer, director, and stockholder with direct ownership of at least 5.0 percent;

(ii) subsidiary; and

(iii) parent company;

(B) a limited liability company--[~~means~~] each officer, member, and parent company;

(C) an individual--[~~means:~~]

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent;[~~.~~]

(D) a partnership--[~~means~~] each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--[~~means~~] each officer, director, or the equivalent under the specific business arrangement and each parent company.

(13) [~~(11)~~] Agency--A HCSSA.

(14) [~~(12)~~] Applicant--The owner of an agency that is applying for a license under the statute [~~Statute~~]. This is the person in whose name the license will be issued.

(15) Assistance with self-administration of medication--Providing help to a client to take the client's medication.

(A) Help may include:

(i) reminding the client when to take medicine;

(ii) opening and closing a medicine bottle;

(iii) measuring the correct amount of liquid medicine;

(iv) returning medicine to the correct storage location; and

(v) helping to order more medicine from the pharmacy.

(B) This type of help may also include administering the medicine if the client:

(i) has a functional limitation;

(ii) understands what the medicine is for; and

(iii) agrees to take the medicine.

[(13) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.]

(16) [(14)] Association--A partnership, limited liability company, or other business entity that is not a corporation.

(17) Attending practitioner--For the purposes of Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services), a practitioner, including a physician, physician assistant, or an advanced practice nurse, who a hospice client chooses at the time hospice services begin and who has the primary responsibility for determination and delivery of the client's medical care. Attending practitioner has the same meaning as "attending physician" in 42 CFR §418.3.

(18) [(15)] Audiologist--A person who is currently licensed under the Texas Occupations Code[,] Chapter 401, as an audiologist.

(19) [(16)] Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(20) [(17)] Bereavement services--Emotional, psychosocial, and spiritual support [Support] services offered to a family before and up to one year after the client's death [during bereavement]. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, assisted living facility, or inpatient unit, when appropriate and identified in a bereavement plan of care.

(21) [(18)] Biologicals--A medicinal preparation made from living organisms and [their] products of living organisms, including serums, vaccines, antigens, and antitoxins.

(22) [(19)] Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).

(23) [(20)] Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(24) [(21)] Care plan--

(A) A [a] written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(25) [(22)] Case conference--A meeting [conference] among personnel furnishing services to the client to ensure that the [their] efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(26) [(23)] Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service or hospice service; and

(B) is certified by an official of the U.S. Department of Health and Human Services as in compliance with Medicare conditions of participation in 42 United States Code (U.S.C.) [USC] Chapter 7, Subchapter XVIII.

(27) [(24)] Certified home health services--Home health services that are provided by a certified agency.

(28) [(25)] CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

(29) [(26)] Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of an agency. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(30) [(27)] Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a HCSSA [home and community support services agency].

(31) [(28)] Client--An individual receiving home health, hospice, or personal assistance services from a licensed HCSSA [home and community support services agency]. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(32) [(29)] Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(33) [(30)] CMS--Centers for Medicare & Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

[(31) Complaint--An allegation against an agency regulated by HHSC or against an employee of an agency regulated by HHSC that involves a violation of this chapter or the Statute.]

(34) [(32)] Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(35) Complaint--An allegation against an agency regulated by HHSC or against an employee of an agency regulated by HHSC that involves a violation of this chapter or the statute.

(36) [(33)] Controlled substance--As defined [Has the meaning assigned] in Texas Health and Safety Code Chapter 481, Subchapter A.

(37) [(34)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(38) [~~(35)~~] Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(39) [~~(36)~~] Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(40) Co-working space--A physical location where employees from different businesses share the same work area.

(41) [~~(37)~~] Day--A [~~Any reference to a day means a~~] calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(42) [~~(38)~~] Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(43) [~~(39)~~] Designated survey office--An HHSC HCSSA program [~~Program~~] office located in an agency's geographic region.

(44) [~~(40)~~] Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment, which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(45) [~~(41)~~] Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(46) [~~(42)~~] Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(47) [~~(43)~~] Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(48) [~~(44)~~] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(49) Electronic record--Any documentation that is maintained by the agency in any computerized format. An electronic record may include:

(A) client records;

(B) clinical records;

(C) financial records;

(D) personnel records;

(E) business records;

(F) quality assessment and improvement (QAPI) documentation; or

(G) any other documentation required to be held by the agency.

(50) Emotional, verbal, or psychological abuse--

(A) Any act or communication, including oral, written, gestured language, directed towards and in the presence of the client that is of such a serious nature that a reasonable person would find the act or communication to be physically or emotionally threatening, intimidating, humiliating, or harassing.

(B) For the definition of emotional, verbal, or psychological abuse to be met, the act or communication must:

(i) result in a client experiencing:

(I) significant negative impact to the client's physical, mental, or emotional health; or

(II) substantial physical, mental, or emotional distress as identified by an appropriate medical professional; or

(ii) be of such a serious nature that a reasonable person would consider it likely to have a significant negative impact on the physical, mental, emotional health of the client.

(51) Employee--An officer, an individual directly hired by an agency, or a contractor, volunteer, intern, or agent working for an agency. Employee also includes an individual with an employment contract with an agency, following Texas Workforce Commission rules for tax form W-2 and 1099 agreements.

(52) [~~(45)~~] ESRD--End stage renal disease. For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(53) Exploitation--The illegal or improper act or process of using a client or the resources of a client for monetary or personal benefit, profit, or gain, excluding:

(A) theft, as defined in Texas Penal Code Chapter 31;

(B) allegations of exploitation less than $25.00; and

(C) a loan, which includes money or property given to someone to use for a time period with an understanding that the loan will be paid back or returned, made by a client to an agency employee who is also a family member.

(54) Functional disability--A mental, cognitive, or physical disability that limits or prevents the physical performance of self-care tasks or personal care.

(55) [~~(46)~~] Functional need--Needs of the individual that require services without regard to diagnosis or label.

(56) [~~(47)~~] Habilitation--Services [~~Habilitation services~~], as defined by Texas Government Code §542.0001 [~~§534.001~~], provided by an agency licensed under this chapter.

(57) [~~(48)~~] HCSSA--Home and community support services agency. A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(58) [~~(49)~~] Health assessment--A determination of a client's physical and mental status through inventory of systems.

~~[(50) HHSC--Texas Health and Human Services Commission.]~~

(59) Healthcare professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, physician assistant, registered nurse, licensed vocational nurse, licensed dietitian, occupational therapist, physical therapist, social worker, and speech therapist.

(60) Health maintenance activities--Tasks that do not fall within the practice of professional nursing and may be performed by an unlicensed person without delegation in accordance with 22 TAC §225.8 (relating to Health Maintenance Activities Not Requiring Delegation).

(61) Health-related task--A task provided by unlicensed personnel related to the needs of an individual that can be delegated by a registered nurse (RN) or that an RN determines does not require delegation in accordance 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(62) HHSC--Texas Health and Human Services Commission.

(63) [~~(51)~~] Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as described in §558.701 of this chapter (relating to Home Health Aides).

(64) [~~(52)~~] Home health medication aide--An unlicensed person issued a permit by HHSC to administer medication to a client under Texas Health and Safety Code Chapter 142, Subchapter B.

(65) [~~(53)~~] Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(66) [~~(54)~~] Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(67) [~~(55)~~] Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide, regardless of license or certification held by the individual, as described in §558.843 of this chapter (relating to Hospice Aide Qualifications).

(68) [~~(56)~~] Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §558.845 of this chapter (relating to Hospice Homemaker Qualifications).

(69) [~~(57)~~] Hospice services--Services, including services provided by employees without a license but under the supervision of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program that follows the rules in this chapter. [~~unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter.~~] These services include physical care and support services to optimize quality of life for terminally ill clients and the terminally ill client's [~~their~~] families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, death, and bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, inpatient unit, or other residence according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client.

(70) [~~(58)~~] IDR--Informal dispute resolution. An informal process that allows an agency to refute a violation or condition-level deficiency cited during a survey.

(71) Immediate threat to the health or safety of a client--A situation, event, or action that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a client.

(72) Immediately--No time should pass, no delay should occur, and action must happen at once, but in all cases, action must take place within 24 hours after discovery of the event that requires immediate action.

(73) [~~(59)~~] Independent living environment--A client's residence, which may include a group home, foster home, or boarding home facility, or other settings where a client participates in activities, including school, work, or church.

(74) [~~(60)~~] Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(75) [~~(61)~~] Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(76) [~~(62)~~] Individualized service plan--A written plan prepared by the appropriate healthcare [~~health care~~] personnel or healthcare professional for a client of a HCSSA [~~home and community support services agency~~] licensed to provide personal assistance services.

(77) Injury of unknown source--An injury that was not witnessed by any person and the source of which cannot be explained by the client.

(78) [~~(63)~~] Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the Medicare conditions of participation for inpatient units adopted under 42 U.S.C. [~~USC~~] Chapter 7, Subchapter XVIII; and

(B) standards adopted under this chapter.

(79) [~~(64)~~] Joint training--Training provided by HHSC at least semi-annually to HCSSAs [~~for home and community support services agencies~~] and HHSC representatives [~~surveyors~~] on subjects that address the 10 most commonly cited violations of federal or state law by HCSSAs [~~home and community support services agencies~~] as published in HHSC annual reports.

(80) [~~(65)~~] LAR--Legally authorized representative. A person authorized by law to act on behalf of a client regarding a matter described in this chapter, and may include:

(A) a parent of a child or adult under Texas Family Code Chapter 101;

(B) a legal guardian of an adult under Texas Estates Code Title 3;

(C) a Texas Department of Family and Protective Services managing conservatorship of a minor;

(D) an agent with authority under a durable power of attorney in accordance with Texas Estates Code Chapter 751; or

(E) a surrogate decision-maker under Texas Health and Safety Code §313.004. [~~a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code §313.004.~~]

(81) [~~(66)~~] License holder--A person that holds a license to operate an agency.

(82) [~~(67)~~] Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(83) [~~(68)~~] Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(84) [~~(69)~~] Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(85) [~~(70)~~] LVN--Licensed vocational nurse. A person who is currently licensed under Texas Occupations Code Chapter 301[~~,~~] as a licensed vocational nurse.

(86) [~~(71)~~] Manager--An employee or independent contractor responsible for providing management services to a HCSSA [~~home and community support services agency~~] for the overall operation of a HCSSA, [~~home and community support services agency~~] including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(87) [~~(72)~~] Medication administration record--A record used to document the administration of a client's medications.

(88) [~~(73)~~] Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(89) [~~(74)~~] Mitigation--An action taken to eliminate or reduce the probability of a disaster or reduce a disaster's severity or consequences.

(90) [~~(75)~~] Multiple location--A Medicare-approved ADS that meets the definition in 42 CFR §418.3.

(91) Neglect--A negligent act or omission which caused or may have caused physical or emotional injury or death to a client or which placed a client at risk of physical or emotional injury or death.

(92) [~~(76)~~] Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(93) [~~(77)~~] Nursing facility--An institution licensed as a nursing home under Texas Health and Safety Code[~~,~~] Chapter 242.

(94) [~~(78)~~] Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(95) [~~(79)~~] Occupational therapist--A person who is currently licensed under the Texas Occupations Code Chapter 454[~~,~~] as an occupational therapist.

(96) [~~(80)~~] Online portal--A secure portal provided on the HHSC website for licensure activities, including for a HCSSA applicant to submit licensure applications and information.

(97) [~~(81)~~] Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §558.210 of this chapter (relating to Agency Place of Business and Operating Hours).

(98) [~~(82)~~] Original active client record--A record composed first-hand for a client currently receiving services.

(99) [~~(83)~~] Palliation [~~Palliative~~]--Ameliorating the symptoms associated with serious illness without the primary goal of curing an underlying condition.

(100) [~~(84)~~] Parent agency--An agency's principal place of business; the location where an agency develops and maintains administrative controls and provides supervision of branch offices and ADSs.

(101) [~~(85)~~] Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

(102) [~~(86)~~] Person--An individual, corporation, or association.

(103) [~~(87)~~] Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(104) [~~(88)~~] Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(105) [~~(89)~~] Pharmacist--A person who is licensed to practice pharmacy under Texas Occupations Code Chapter 558.

(106) [~~(90)~~] Pharmacy--A facility defined in Texas Occupations Code §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed, and which holds a pharmacy license issued under Texas Occupations Code Title 3, Subtitle J.

(107) Physical abuse--

(A) An act, or failure to act, that is performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a client;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to a client; or

(C) the use of chemical or bodily restraints or seclusion on a client not in compliance with federal and state laws and regulations.

(108) [~~(91)~~] Physical therapist--A person who is currently licensed under Texas Occupations Code Chapter 453[~~,~~] as a physical therapist.

(109) [~~(92)~~] Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with Texas Occupations Code §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service, if the person is not engaged in private practice, in accordance with the Texas Occupations Code §151.052(a)(8).

(110) [~~(93)~~] Physician assistant--A person who is licensed under Texas Occupations Code Chapter 204[~~,~~] as a physician assistant.

(111) [~~(94)~~] Physician-delegated task--A task performed in accordance with Texas Occupations Code Chapter 157, including orders signed by a physician that specify the delegated task, individual to whom the task is delegated, and client's name.

(112) [~~(95)~~] Place of business--An office that is a physical location for maintaining client records and directing home health, hospice, or personal assistance services. This term includes a parent agency, branch office, inpatient unit, and ADS. This term does not include an administrative support site. [~~An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an ADS. The term does not include an administrative support site.~~]

(113) [~~(96)~~] Plan of care--The written orders of a practitioner for a client who requires skilled services.

(114) [~~(97)~~] Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is an RN registered with the Texas Board of Nursing as an advanced practice nurse.

(115) [~~(98)~~] Preparedness--Actions taken in anticipation of a disaster.

(116) Preponderance of evidence--A burden of proof meaning the greater weight of the evidence; that is, evidence that as a whole, shows that the fact sought to be proved is more probable than not.

(117) Present and ongoing threat--A situation in which the agency's noncompliance with one or more requirements of licensure or certification has failed to protect clients from abuse, neglect, or exploitation or has caused, or is likely to cause, serious injury, harm, impairment, or death to a client.

(118) [~~(99)~~] Presurvey training--A computer-based training provided by HHSC for the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide information regarding the survey process.

(119) Primary care physician--The physician who is the first point of contact for the medical care of a client and takes continuing responsibility for the client's care.

(120) [~~(100)~~] Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(121) Pseudo-person--An individual or computerized mannequin device used as a substitute for a client during competency tests and evaluation. Use of a pseudo-person occurs when physical contact with an actual client is not practical.

(122) [~~(101)~~] Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(123) [~~(102)~~] Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

(124) [~~(103)~~] Registered nurse delegation--The delegation of nursing tasks to an unlicensed professional [~~Delegation by a registered nurse~~] in accordance with:

(A) 22 TAC Chapter 224 (relating to [~~concerning~~] Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 [~~(relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions)~~].

(125) Regular business hours--Monday through Friday from 8:00 a.m. to 5:00 p.m.

(126) [~~(104)~~] Residence--A place where a person resides within the State of Texas, including a home, [~~a~~] nursing facility, [~~a~~] convalescent home, [~~or a~~] residential unit, homeless or emergency evacuation shelter, or tent encampment.

(127) [~~(105)~~] Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under Texas Health and Safety Code Chapter 142.

(128) [~~(106)~~] Respiratory therapist--A person who is currently licensed under Texas Occupations Code Chapter 604[~~,~~] as a respiratory care practitioner.

(129) [~~(107)~~] Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(130) [~~(108)~~] Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(131) [~~(109)~~] Restraint--A restraint is:

(A) a manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in an [~~a hospice~~] inpatient unit to move the client's [~~his or her~~] arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

(i) conducting a routine physical examination or test;

(ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) a drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in an [~~a hospice~~] inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(132) [~~(110)~~] RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code Chapter 301, as a registered nurse.

(133) [~~(111)~~] Seclusion--The involuntary confinement of a client alone in a room or an area in an [~~a hospice~~] inpatient unit from which the client is physically prevented from leaving.

(134) [~~(112)~~] Section--A reference to a specific rule in this chapter.

(135) [~~(113)~~] Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(136) Sexual abuse--

(A) Means any sexual activity involving a client and an agency employee, including:

(i) kissing a client with sexual intent;

(ii) hugging a client with sexual intent;

(iii) stroking a client with sexual intent;

(iv) fondling a client with sexual intent;

(v) engaging in, with a client:

(I) sexual conduct as defined in the Texas Penal Code §43.01; or

(II) any activity that is obscene as defined in the Texas Penal Code §43.21;

(vi) requesting, soliciting, or compelling a client to engage in:

(I) sexual conduct as defined in the Texas Penal Code §43.01; or

(II) any activity that is obscene as defined in the Texas Penal Code §43.21;

(vii) in the presence of a client:

(I) engaging in or displaying any activity that is obscene, as defined in the Texas Penal Code §43.21; or

(II) requesting, soliciting, or compelling another person to engage in any activity that is obscene, as defined in the Texas Penal Code §43.21;

(viii) committing sexual assault as defined in the Texas Penal Code §22.011, against a client;

(ix) committing aggravated sexual assault as defined in the Texas Penal Code §22.021, against a client;

(x) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping, or depicting of a client if the agency employee knew or should have known that the resulting photograph, film, videotape, or depiction of the client is obscene as defined in the Texas Penal Code §43.21, or is pornographic; and

(xi) committing sexual exploitation, defined as a pattern, practice, or scheme of conduct against a client, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of

any person; the term does not include obtaining information about a client's sexual history within standard accepted clinical practice.

(B) Notwithstanding any other provision in this section, consensual sexual activity between an agency employee and an adult client is not considered sexual abuse if the consensual sexual relationship began prior to the agency employee becoming an agency employee providing care to the client.

(137) [~~(114)~~] Skilled services--Services provided in accordance with a plan of care that require the skills of:

(A) an RN;

(B) an LVN;

(C) a physical therapist;

(D) an occupational therapist;

(E) a respiratory therapist;

(F) a speech-language pathologist;

(G) an audiologist;

(H) a social worker; or

(I) a dietitian.

(138) [~~(115)~~] Social worker--A person who is currently licensed as a social worker under Texas Occupations Code Chapter 505.

(139) [~~(116)~~] Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code Chapter 401.

(140) [~~(117)~~] Statute--Texas Health and Safety Code Chapter 142.

(141) Substantiated--A preponderance of evidence supports that the abuse, neglect, or exploitation (ANE) allegation happened.

~~[(118) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.]~~

(142) [~~(119)~~] Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by an RN or by an LVN who works under the direction of an RN. [~~a registered nurse.~~]

(143) [~~(120)~~] Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §558.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(144) [~~(121)~~] Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(145) [~~(122)~~] Supportive palliative care--Physician-directed interdisciplinary client [~~patient~~] and family-centered care provided to a client [~~patient~~] with a serious illness without regard to the client's [~~patient's~~] age or terminal prognosis that:

(A) may be provided concurrently with methods of treatment or therapies that seek to cure or minimize the effects of the client's [~~patient's~~] illness; and

(B) seek to optimize the quality of life for a client's [~~patient~~] with a life-threatening or life-limiting illness and the client's [~~patient's~~] family through various methods, including methods that seek to:

(i) anticipate, prevent, and treat the client's [~~patient's~~] total suffering related to the client's [~~patient's~~] physical, emotional, social, and spiritual condition;

(ii) address the physical, intellectual, emotional, cultural, social, and spiritual needs of the client [~~patient~~]; and

(iii) facilitate for the client [~~patient~~], regarding treatment options, education, informed consent, and expression of desires.

(146) [~~(123)~~] Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(147) [~~(124)~~] Survey--An [~~on-site~~] inspection or complaint investigation conducted by an HHSC representative to determine if an agency is in compliance with the statute [~~Statute~~] and this chapter or in compliance with applicable federal requirements or both.

(148) [~~(125)~~] TAC--Texas Administrative Code.

(149) Telecommunications--A two-way electronic exchange of information or data that includes voice, data, and video transmission. Telecommunications may use computers, tablets, applications, telephones, or other electronic technologies.

(150) Telehealth--A way for a home health or hospice agency to monitor a client who is not in a clinical health facility using telephone lines and other communication systems to exchange information and data. Telehealth focuses on health promotion, disease prevention, diagnosis, consultation, and education.

(151) Telemedicine--A service provided to a client in the client's place of residence or independent living environment, when the client is in a different physical location than the provider. Telemedicine must be delivered by a physician licensed to practice in this state, or by a physician assistant or advanced practice nurse who is acting under the delegation and supervision of a physician licensed in this state and acting within the scope of the physician's or healthcare professional's license. Telemedicine uses telecommunications or information technology to deliver the service.

(152) Telemonitoring--The collection and transmission of clinical data between a home health or hospice agency and a client in an independent living environment within the agency's service area through electronic processing technologies. The agency conducts a clinical review of the transferred data and responds as appropriate.

(153) Teleservices--Services provided using telehealth, telemedicine, telemonitoring, or telecommunications.

(154) [~~(126)~~] Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(155) [~~(127)~~] Unlicensed person--A person not licensed as a healthcare [~~health care~~] provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by HHSC, and other unlicensed individuals providing personal care or assistance in health services.

(156) [~~(128)~~] Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(157) Unsubstantiated--A preponderance of evidence does not support that the ANE allegation happened.

(158) Virtual office--The use of only cloud-based services with office-related services without a fixed space for the agency's place of business.

(159) [~~(129)~~] Violation--A finding of noncompliance with this chapter or the statute [~~Statute~~] resulting from a survey.

(160) [~~(130)~~] Volunteer--An individual who provides assistance to a HCSSA [~~home and community support services agency~~] without compensation other than reimbursement for actual expenses.

(161) Willfully--An intentional or deliberate action taken knowingly, rather than by accident, with disregard for the outcome.

(162) [~~(131)~~] Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

§558.3. License Fees.

(a) The schedule of fees for licensure of an agency authorized to provide one or more services is as follows:

(1) initial (includes change of ownership) license fee--$2,625;

(2) renewal license fee for a three-year license--$2,625;

[~~(3) renewal license fee for a two-year license--$1,750;~~]

(3) [~~(4)~~] initial (includes change of ownership) branch office license fee--$2,625;

(4) [~~(5)~~] renewal branch office license fee for a three-year license--$2,625;

[~~(6) renewal branch office license fee for a two-year license--$1,750;~~]

(5) [~~(7)~~] initial (includes change of ownership) ADS license fee--$1,500; and [~~$1,000;~~]

(6) [~~(8)~~] renewal ADS license fee for a three-year license--$900.[~~; and~~]

[~~(9) renewal ADS license fee for a two-year license--$600.~~]

(b) Separate fees for branch office and ADS licenses and renewals are required for each physical address. To renew a branch office or ADS license, the license holder [~~licensee~~] must submit the renewal application and payment in full through the online portal, of all applicable licensing fees, for each branch office and ADS sought to be renewed, at the same time as the parent agency submission for renewal.

(c) A late fee assessed under Subchapter B of this chapter (relating to Criteria and Eligibility, Application Procedures, and Issuance of a License) is one-half the amount of the required renewal license fee established in subsection (a) of this section. If HHSC assesses a late fee described in this subsection, the applicant must pay the applicable renewal application fee in full plus the late fee described in this section. HHSC may assess a separate late fee for each parent agency, branch office, and ADS renewal application.

(d) If an applicant for an initial license based on a change of ownership submits a late application for a license to HHSC, as described in §558.25 of this chapter (relating to Requirements for Change of Ownership), the applicant must pay the required initial license fee, as set out in subsection (a) of this section, plus a late fee of $250.

(e) HHSC does not review an application until the applicant submits the application through the online portal and the online portal reflects a status of payment received.

(f) A license fee paid to HHSC is not refundable but may be reimbursed under the circumstances and conditions described in §558.31 of this chapter (relating to Time Frames for Processing and Issuing a License).

(g) HHSC accepts payment of required fees made in accordance with options made available through the online portal.

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

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Karen Ray
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Health and Human Services Commission
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SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

26 TAC §§558.11, 558.13, 558.15, 558.17, 558.19, 558.21, 558.23, 558.25, 558.27, 558.29, 558.30

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.11. Criteria and Eligibility for Licensing.

(a) An applicant for a license must not admit a client or initiate services until the applicant completes the application process and receives an initial license.

(b) A first-time application for a license is an application for an initial license.

(c) An application for a license when there is a change of ownership is an application for an initial license.

(d) A separate license is required for each place of business as defined in §558.2 of this chapter (relating to Definitions).

(e) An agency's place of business must be located in and have a physical [~~an~~] address in Texas. An agency located in another state must receive a license as a parent agency in Texas to operate as an agency in Texas.

(f) An applicant must be at least 18 years of age.

(g) Before issuing a license, HHSC considers the background of:

(1) the applicant;

(2) a controlling person of the applicant;

(3) a person with a disclosable interest;

(4) an affiliate of the applicant; and

(5) the chief financial officer.

(h) Before issuing a license, HHSC considers the background and qualifications of the administrator and alternate administrator in accordance with §558.244 of this chapter (relating Administrator Qualifications and Conditions and Supervising Nurse Qualifications).

(i) HHSC may deny an application for an initial license or for renewal of a license if a person described in subsection (g) or (h) of this section:

(1) on the date of the application:

(A) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter;

(B) has an unsatisfied final judgment in any state or other jurisdiction; or

(C) is delinquent on child support obligations (Texas Family Code Chapter 232);

(2) for two years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) an unresolved federal or state tax lien;

(B) an eviction involving any property or space used as an inpatient hospice agency; [~~or~~]

(C) an unresolved final Medicare or Medicaid audit exception; or

(D) a surrendered license before expiration or allowing a license to expire, including doing so instead of the licensing authority proceeding with enforcement action; or

(3) for 12 months preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) denial, suspension, or revocation of an agency license or a license for a health care facility;

[~~(B) surrendering a license before expiration or allowing a license to expire instead of the licensing authority proceeding with enforcement action;~~]

(B) [~~(C)~~] a Medicaid or Medicare sanction or penalty relating to the operation of an agency or a healthcare [~~health care~~] facility;

(C) willfully operating an agency without a valid and active license;

(D) operating an agency that has been decertified in any state under Medicare or Medicaid; or

(E) debarment, exclusion, or involuntary contract cancellation in any state from Medicare or Medicaid.

§558.13. Obtaining an Initial License.

(a) The following staff must complete the Presurvey Training before submitting an application for a license:

(1) the administrator and alternate administrator; and

(2) the supervising nurse and alternate supervising nurse of an agency that provides licensed home health services with or without home dialysis designation, licensed and certified home health services with or without home dialysis designation, or hospice services.

(b) An applicant may request to be licensed in one or more, in any combination, of the following categories:

(1) licensed and certified home health services;

(2) licensed and certified home health services with home dialysis designation;

(3) licensed home health services;

(4) licensed home health services with home dialysis designation;

(5) hospice services; or

(6) personal assistance services.

(c) HHSC does not require an agency to be licensed in more than one category if the category for which the agency is licensed includes the services the agency provides.

(d) An applicant who has requested the category of licensed and certified home health services on the initial license application must also apply to CMS for certification as a Medicare-certified agency under the 42 United States Code Chapter 7, Subchapter XVIII.

(1) While the applicant is waiting for CMS to certify the agency [~~it~~] as [~~a~~] Medicare-certified [~~agency~~]:

(A) HHSC issues an initial license reflecting the category of licensed home health services if the applicant meets the criteria for the license; and

(B) the applicant must comply with the Medicare conditions of participation for home health agencies in 42 CFR Part 484, as if the applicant were dually certified.

(2) If CMS certifies an agency to participate in the Medicare program during the initial license period, HHSC sends a notice to the agency that the category of licensed and certified home health services has been added to the license. If the agency wants to remove the licensed home health services category from the agency's license after the category of licensed and certified home health services has been added, the agency must submit to HHSC an application through the online portal to remove that category from the agency's license.

(3) If CMS denies certification to an agency or an agency withdraws the application for participation in the Medicare program, the agency may retain the category of licensed home health services on its license.

(e) An applicant for an initial license must comply with §558.30 of this subchapter (relating to Operation of a Hospice [~~an~~] Inpatient Unit at a Parent Agency) to operate an inpatient unit at the applicant's parent agency.

§558.15. Issuance of an Initial License.

(a) HHSC issues an initial license when HHSC determines:

(1) the application, including supporting documents, submitted are complete and accurate;

(2) HHSC has received funds constituting full payment of all applicable license fees, including late fees; and

(3) an applicant meets the criteria for a license as described in §558.11 of this subchapter (relating to Criteria and Eligibility for Licensing) and §558.13 of this subchapter (relating to Obtaining an Initial License).

(b) An initial license is valid for three years from the date of issuance.

(c) HHSC may deny an application to renew an initial license, or revoke or suspend an initial license, if an agency fails to:

(1) meet the requirements for an initial survey as specified in Subchapter E of this chapter (relating to Licensure Surveys and Investigations of Abuse, Neglect, and Exploitation); or

(2) maintain compliance with the statute [~~Statute~~] and this chapter for the services authorized under the license.

(d) HHSC may deny an application for an initial license for any of the reasons specified in §558.21 of this subchapter [~~chapter~~] (relating to Denial of an Application or a License).

(e) A license designates an agency's place of business from which services are to be provided and designates an agency's authorized category or categories of service.

§558.17. Application Procedures for a Renewal License.

(a) To renew its license, an agency must submit a renewal application through the online portal.

(b) An agency must submit its renewal application in accordance with §558.12 of this subchapter (relating to General Application) when submitting a renewal application through the online portal.

(c) For each license period, an agency must provide services to at least one client to be eligible to renew its license.

(d) HHSC does not require an agency to admit a client under each category of service authorized under the license to be eligible to renew its license.

(e) With each renewal application, an agency accredited by an accreditation organization referenced in §558.503 of this chapter (relating to Accreditation Process and Exemption from a Survey) must submit to HHSC through the online portal a copy of the accreditation documentation that the agency receives from the accreditation organization.

(f) At least 120 days before the expiration date of a license, HHSC makes the renewal application and instructions available through the online portal. HHSC notifies the agency with electronic notice that the application and instructions to renew the license are made available through the online portal.

(1) If the renewal application is not made available by HHSC in accordance with this subsection, the agency must, at least 90 days before the expiration date of a license, notify HHSC in writing that the agency [~~it~~] has not received notice of expiration and request that HHSC make a renewal application available.

(2) To avoid a late fee, an agency must submit to HHSC a complete and accurate renewal application, as described in §558.12(c) of this subchapter, with full payment of all required license fees as specified in §558.3 of this chapter (relating to License Fees), no later than the 45th day before the expiration date of the license.

(3) If an agency submits a renewal application after the 45th day before the expiration date of a license, but before the expiration date of the license, HHSC assesses the late fee set out in §558.3(c) of this chapter for failure to comply with paragraph (2) of this subsection.

(g) If an agency submits a renewal application to HHSC after the expiration date of the license, HHSC denies the renewal application and does not refund the renewal license fee. The agency is not eligible to renew the license and must cease operation on the date the license expires. An agency whose license expires must apply for an initial license in accordance with §558.13 of this subchapter (relating to Obtaining an Initial License).

(h) If an agency submits a renewal application before the expiration date of the license in accordance with this subsection, the license does not expire until HHSC has made a final determination on the application.

(1) If an enforcement action is pending at the time the renewal applicant submits a renewal application, the agency's license does not expire and the agency may continue to operate until HHSC had made a final determination on the application, concurrent with the agency's opportunity for a formal hearing as described in §558.601 of this chapter (relating to Enforcement Actions).

(2) A license expires if the license holder fails to submit a renewal application in accordance with the subsection before the expiration date.

(i) If a license holder fails to submit a renewal application in accordance with subsection (h) of this section because the license holder is or was on active duty with the armed forces of the United States of America outside the State of Texas, the license holder may renew the license pursuant to this subsection.

(1) An individual having power of attorney from the license holder or other authority to act on behalf of the license holder may request renewal of the license. The renewal application must include a current address and telephone number for the individual requesting the renewal.

(2) An agency may submit a request for a renewal application through the online portal before or after the expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the license holder is or was on active military duty serving outside the State of Texas must be submitted to HHSC with the renewal application.

(4) A copy of the power of attorney from the license holder or other authority to act on behalf of the license holder must be submitted to HHSC with the renewal application.

(5) A license holder applying to renew a license under this subsection must pay the required renewal fee in full.

(6) A license holder may not operate the agency for which the license was obtained after the expiration of the license unless and until HHSC renews the license.

(7) This subsection applies to a license holder who is an individual or a partnership comprised of individuals, all of whom are or were on active duty with the armed forces of the United States of America serving outside the State of Texas.

(j) An applicant for a renewal license must comply with §558.30 of this subchapter (relating to Operation of a Hospice [~~an~~] Inpatient Unit at a Parent Agency) to operate an inpatient unit at the applicant's parent agency.

§558.19. Issuance of a Renewal License.

(a) A license issued under this chapter expires three years after the date HHSC issues the license [~~it, except as provided in subsections (e)(1) and (f)(1) of this section~~].

(b) Except as specified in §558.503 of this chapter (relating to Accreditation Process and Exemption from [~~From~~] a Survey), HHSC may not renew an initial license unless HHSC conducts an initial survey of the agency. For renewal of an initial license, an agency must:

(1) meet the requirements for an initial survey as specified in Subchapter E of this chapter (relating to Licensure Surveys and Investigations of Abuse, Neglect, and Exploitation);

(2) have had [~~demonstrate substantial compliance with the Statute and this chapter for the services authorized under the license as confirmed by~~] an initial survey; and

(3) apply for renewal of the license in accordance with §558.17 of this subchapter (relating to Application Procedures for a Renewal License).

(c) For renewal of a license other than an initial license, an agency must[~~:~~]

[~~(1) maintain substantial compliance with the Statute and this chapter for the services authorized under the license; and~~]

[~~(2)~~] apply for renewal of the license in accordance with §558.17 of this subchapter.

(d) If HHSC grants the renewal application, it issues a renewal license effective on the day after the previous license expires.

[~~(e) If HHSC renews a license that expires after December 31, 2020, and before January 1, 2022, HHSC:~~]

[~~(1) issues a license that is valid for two years, if the license is for an agency with a license number that ends in 0-3 or 7-9; and~~]

[~~(2) issues a license that is valid for three years, if the license is for an agency with a license number that ends in 4-6.~~]

[~~(f) If HHSC renews a license that expires after December 31, 2020, and before January 1, 2023, HHSC:~~]

[~~(1) issues a license that is valid for two years, if the license is for an agency with a license number that ends in 4-6; and~~]

[~~(2) issues a license that is valid for three years, if the license is for an agency with a license number that ends in 0-3 or 7-9.~~]

(e) [~~(g)~~] HHSC may deny a renewal application:

(1) if an agency fails to meet the eligibility criteria in §558.11 of this subchapter (relating to Criteria and Eligibility for Licensing);

(2) if the agency fails to meet the requirements for renewal of a license as specified in this subchapter; or

(3) for any of the reasons specified in §558.21 of this subchapter (relating to Denial of an Application or a License).

(f) [~~(h)~~] A renewal license designates an agency's place of business from which services are to be provided or directed and designates an agency's authorized category or categories of service.

§558.21. Denial of an Application or a License.

(a) HHSC may deny an application for a license on any ground described in this chapter, or if any person described in §558.11(g) or (h) of this subchapter (relating to Criteria and Eligibility for Licensing):

(1) fails to comply with the statute [~~Statute~~];

(2) fails to comply with this chapter;

(3) knowingly aids, abets, or permits another person to violate the statute [~~Statute~~] or this chapter;

(4) fails to meet the criteria for a license established in §558.11 of this subchapter; or

(5) violates Texas Occupations Code §102.001.

(b) If an inpatient unit fails to meet the licensure requirements within 120 days after the initial Life Safety Code inspection, the HHSC HCSSA Licensing Unit proposes to deny the application for a license and refers the application to the HHSC Regulatory Enforcement Division.

(c) [~~(b)~~] If HHSC denies an application for a license, the applicant or agency may request an administrative hearing in accordance with §558.601 of this chapter (relating to Enforcement Actions).

§558.23. Change of Ownership.

(a) A license holder may not transfer its license. If there is a change of ownership, the license holder's license becomes invalid on the date of the licensure change of ownership. The prospective license holder must apply for a license in accordance with §558.12 of this subchapter (relating to General Application) and §558.13 of this subchapter (relating to Obtaining an Initial License).

(b) If HHSC approves an [~~grants the~~] application for an initial change of ownership license and allows an initial change of ownership application to occur without a gap in the agency's licensed status, the license holder at the time of the application must maintain an active and valid license until HHSC grants and issues an initial license to the change of ownership applicant. Between the date when ownership changes and the date when HHSC issues the change of ownership license, the current license holder remains responsible under the current license; however, the applicant may operate the agency on behalf of the current license holder during such time.

(c) A change of ownership for a parent agency is a change of ownership for the parent agency's branch office or ADS and requires the submittal of an application and license fee for each branch office and ADS at the same time as the parent agency application and fee.

(d) HHSC conducts an on-site health inspection to verify compliance with the licensure requirements after issuing a license as a result of a change of ownership. HHSC may conduct a desk review instead of an on-site health inspection after issuing a license as a result of a change of ownership if:

(1) less than 50 percent of the direct or indirect ownership interest in the former license holder changed, when compared to the new license holder; or

(2) every owner with a disclosable interest in the new license holder had a disclosable interest in the former license holder.

(e) For an agency licensed to provide licensed and certified home health services or certified, as well as licensed, to provide hospice services, applicable federal laws and regulations relating to change of ownership or control apply in addition to the requirements of this section.

§558.25. Requirements for Change of Ownership.

(1) The change of ownership applicant must submit the complete and accurate initial application with full payment of required license fees at least 30 days before the anticipated date of sale or other transfer of ownership and before the expiration date of the current license holder's license.

(A) HHSC may accept a change of ownership application less than 30 days before the effective date.

(B) HHSC may assess a late fee set out in §558.3(d) of this chapter (relating to License Fees).

(2) A complete change of ownership application includes:

(A) the application fee; and

(B) a signed and notarized Change of Ownership Transfer Affidavit (HHSC Form 1092) from the applicant and the agency's current license holder. The form must show intent to transfer agency operations from the current license holder to the applicant beginning on the effective date specified on the change of ownership application.

(3) [~~(2)~~] The change of ownership applicant must apply for an [~~the~~] initial license by submitting a change of ownership application through the online portal in accordance with §558.23(a) of this subchapter (relating to Change of Ownership) and meet the criteria for a license as described in §558.11 of this subchapter (relating to Criteria and Eligibility for Licensing) and §558.13 of this subchapter (relating to Obtaining an Initial License).

(4) [~~(3)~~] If an applicant submits a complete and accurate application through the online portal, has met all the criteria for a license, and HHSC has received funds constituting full payment of all required license fees, [~~fee~~] HHSC issues the change of ownership applicant an initial license. The effective date of the license constitutes the licensure change of ownership date.

(5) [~~(4)~~] The initial license issued to the new owner through a change of ownership is valid for three years from the date of issuance.

§558.27. Application and Issuance of an Initial Branch Office License.

(a) An agency with a current license to provide licensed home health services, licensed and certified home health services, or personal assistance services may qualify for a branch office license, if the parent agency:

[~~(1) is found to be in substantial compliance with the Statute and this chapter;~~]

(1) [~~(2)~~] has no enforcement action pending against the license; and

(2) [~~(3)~~] meets its initial survey requirements before HHSC approves a branch office license.

(b) To apply for a branch office license, an agency must submit an application for the license to HHSC through the online portal, in accordance with §558.12 of this subchapter (relating to General Application).

(c) A designated survey office conducts a review of an agency's request to establish a branch office. The survey office makes a recommendation to approve or disapprove the branch office request.

(d) HHSC HCSSA Licensing Unit approves or proposes to deny [~~denies~~] the application for a branch office license after considering the designated survey office's recommendation. If HHSC HCSSA Licensing Unit proposes to deny the application [~~denies the application~~], HHSC Regulatory Enforcement Division sends the agency a written notice:

(1) of its decision; and

(2) the agency's opportunity to appeal its decision through a formal hearing process as described in §558.601 of this chapter (relating to Enforcement Actions).

(e) CMS approves or denies the branch location if an agency is licensed to provide licensed and certified home health services.

(f) A branch office license expires on the same expiration date as the parent agency's license. To renew a branch office license, the license holder must submit, to HHSC through the online portal, a complete and accurate renewal application and all required fees for the branch office license application, and the agency must [~~may~~] renew the branch office license [~~it~~] with the parent agency's license.

(g) If HHSC grants a branch office license, it provides the branch office license to the license holder for the parent agency and branch office. The branch office must post the license in a conspicuous place on the licensed branch office premises.

(h) A branch office must comply with §558.321 of this chapter [~~title~~] (relating to Standards for Branch Offices) and the additional standards that relate to the agency's authorized categories under the license.

(i) Unless an agency is exempt from the survey, as specified in §558.503 of this chapter (relating to Accreditation Process and Exemption from [~~From~~] a Survey), HHSC does not renew a branch office license if HHSC [~~it~~] has not conducted a health survey of a branch office after issuance of the license to verify compliance with the statute [~~Statute~~] and this chapter.

§558.29. Application and Issuance of an Alternate Delivery Site License.

(a) An agency with a license to provide hospice services may qualify for an ADS license if the parent agency[~~:~~]

[~~(1) is in substantial compliance with the Statute and this chapter; and~~]

[~~(2)~~] has no enforcement action pending against its license.

(b) To apply for an ADS license, an agency must submit an ADS application to HHSC through the online portal, in accordance with §558.12 of this subchapter (relating to General Application).

(1) In the application, an agency may request to operate an inpatient unit at the ADS location.

(2) To add an inpatient unit to a licensed ADS, an agency must submit a change of service category application through the online portal according to the instructions for requesting HHSC approval, and otherwise comply with requirements of this section.

(c) After an agency submits an application for an ADS with an inpatient unit, the agency must upload a notification of readiness for Life Safety Code survey to the online portal. HHSC coordinates with [~~contact~~] the HHSC Architectural Unit and regional office to request a Life Safety Code survey. [~~Before HHSC considers whether the application is complete, HHSC determines an agency's compliance with the Life Safety Code requirements §558.871 of this chapter (relating to Physical Environment in a Hospice Inpatient Unit).~~]

(d) Before HHSC reviews an application for completeness, HHSC determines whether the agency complies with Life Safety Code requirements in Subchapter H, Division 9 of this chapter (relating to Physical Environment in an Inpatient Unit).

(e) [~~(d)~~] A designated survey office reviews an agency's application for an ADS license and makes a recommendation to the HHSC HCSSA Licensing Unit [~~licensing unit~~] whether to approve or deny the application. The HHSC HCSSA Licensing Unit [~~licensing unit~~] approves or proposes to deny [~~denies~~] the agency's application.

(f) [~~(e)~~] After receiving the proposal to deny the agency's application from the HHSC HCSSA Licensing Unit, HHSC Regulatory Enforcement Division [~~If HHSC denies an agency's application, HHSC~~] sends the agency a written notice:

(1) informing the agency of its decision; and

(2) providing the agency with an opportunity to appeal its decision through a formal hearing process as described in §558.601 of this chapter (relating to Enforcement Actions).

(g) [~~(f)~~] Except as provided in subsection (h) [~~(g)~~] of this section, after HHSC issues a license for an ADS for a hospice [~~with an~~] inpatient unit:[~~,~~]

(1) the agency must, after providing inpatient services to a client, submit the Notification of Readiness for a Health Survey [~~of a Hospice Inpatient Unit~~] (HHSC Form 2020 [~~Form 2020-A~~]), to the designated survey office; and[.]

(2) HHSC conducts an initial licensure health survey to review the requirements [~~in §558.871 of this chapter~~] specified in Subchapter H, Division 7 of this chapter (relating to [~~Hospice~~] Inpatient Units) that an HHSC Life Safety Code surveyor did not review during the initial Life Safety Code survey.

(h) [~~(g)~~] An agency is not required to request an initial licensure health survey of an ADS for a hospice [~~with an~~] inpatient unit if the agency is exempt from the health survey as specified in §558.503 of this chapter (relating to Accreditation Process and Exemption from [~~From~~] a Survey). [~~To demonstrate that it is exempt, the agency must send the accreditation documentation from the accreditation organization to the HHSC designated survey office within seven days after the agency receives the accreditation documentation.~~]

[~~(h) If an agency receives accreditation documentation from the accreditation organization after the agency submits a written request to HHSC for an initial licensure health survey, the agency may demonstrate that it is exempt from the survey by sending the accreditation documentation to the HHSC designated survey office before HHSC arrives at the agency to conduct an initial health survey.~~]

(i) A Medicare-certified hospice agency must also submit a request to CMS for approval of an ADS, including an ADS for a hospice [~~with an~~] inpatient unit. CMS approves or denies the request. An agency must not admit Medicare beneficiaries for reimbursement before receiving CMS approval.

(j) An ADS license expires on the same date the parent agency's license expires. To renew an ADS license, the license holder must submit to HHSC through the online portal a renewal application and all required fees for the ADS license when submitting a renewal application for the parent agency's license.

(k) If HHSC grants an ADS license, it will provide the license to the parent agency. The agency must post the ADS license in a conspicuous place on the licensed ADS premises.

(l) An ADS must comply with the statute [~~Statute~~] and this chapter, including the applicable additional standards for hospice agencies in Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) and §558.322 of this chapter (relating to Standards for Alternate Delivery Sites). A Medicare-certified hospice agency's ADS must also comply with the applicable federal rules and regulations for hospice agencies in 42 CFR Part 418.

§558.30. Operation of a Hospice [~~an~~] Inpatient Unit at a Parent Agency.

(a) To operate a hospice [~~an~~] inpatient unit at a parent agency, the license holder for the parent agency or an applicant for an initial license to provide hospice services must:

(1) submit an initial parent application through the online portal according to applicable instructions for requesting HHSC approval to operate a hospice [~~an~~] inpatient unit at the parent agency;

(2) send written notice to HHSC that the agency [~~it~~] is ready for a Life Safety Code inspection through the online portal; and

(3) allow HHSC to conduct an on-site Life Safety Code inspection to determine if the inpatient unit is in compliance with Subchapter H, Division 9 [~~§558.871~~] of this chapter (relating to Physical Environment in an [~~a Hospice~~] Inpatient Unit).[~~;~~]

(b) Before reviewing the application for completeness, HHSC determines if the hospice inpatient unit meets all Life Safety Code requirements in Subchapter H, Division 9 of this chapter.

(c) After HHSC issues a license authorizing the hospice inpatient unit, the agency must:

(1) admit and provide hospice services to a client in the hospice inpatient unit; and

(2) except as provided in subsection (e) of this section, submit the Notification of Readiness for a Health Survey (HHSC Form 2020) to HHSC after admitting and providing services to at least one client in the inpatient unit.

[~~(4) obtain verification from HHSC that the inpatient unit is in compliance with Subchapter H, Division 7 of this chapter (relating to Hospice Inpatient Units) before admitting a client to the inpatient unit;~~]

[~~(5) after HHSC issues a license authorizing the inpatient unit, admit and provide hospice services to a client in the inpatient unit; and~~]

[~~(6) except as provided in subsection (e) of this section:~~]

[~~(A) submit the Notification of Readiness for a Health Survey of a Hospice Inpatient Unit (HHSC Form 2020-A) to HHSC after admitting and providing services to at least one client in the inpatient unit; and~~]

[~~(B) be determined by HHSC to be in substantial compliance with the Statute and this chapter, including Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services).~~]

(d) [~~(b)~~] If the applicant is currently licensed at the time an agency submits an application through the online portal to [~~notifies~~] HHSC in accordance with subsection (a)(1) of this section, the agency must not have enforcement action pending against the license, as specified in §558.601 of this chapter (relating to Enforcement Actions), under which the agency would operate the inpatient unit.

(e) [~~(c)~~] An agency that provides hospice services is not required to submit the Notification of Readiness for a Health Survey [~~of a Hospice Inpatient Unit~~] (HHSC Form 2020 [~~Form 2020-A~~]) in accordance with subsection (c)(2) [~~(a)(6)(A)~~] of this section if the agency demonstrates that it is exempt from a health survey, as described in §558.503 of this chapter (relating to Accreditation Process and Exemption from [~~From~~] a Survey). [~~The agency may demonstrate that it is exempt from the initial health survey described in §558.521 of this chapter (relating to Requirements for an Initial Survey) by submitting the accreditation documentation from an approved accreditation organization referenced in §558.503 of this chapter to the designated HHSC survey office within seven days after the agency receives the accreditation documentation.~~]

(f) [~~(d)~~] If HHSC grants an application for an initial [~~parent agency~~] license for a hospice [~~with an~~] inpatient unit or to add a hospice [~~an~~] inpatient unit to a [~~licensed~~] parent agency's license [~~agency~~], the licensed agency and the license holder must comply with the statute [~~Statute~~] and this chapter[~~, including Subchapter H of this chapter~~].

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

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Karen Ray
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SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES
DIVISION 2. CONDITIONS OF A LICENSE

26 TAC §§558.208, 558.210, 558.211, 558.213 - 558.220

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.208. Reporting Changes in Application Information and Fees.

(a) If certain information provided on an initial or renewal application changes after HHSC issues the license, an agency must report the change to HHSC via the online portal. The agency must use the HCSSA [~~Home and Community Support Services Agency~~] License Application through the online portal[~~, (HHSC Form 2021)~~] to report the change. To avoid a late fee, an agency must report a change as required in this subsection and pay in full applicable fees required under subsection (b) of this section, within the time frame specified for the type of change.

(1) For requirements on reporting a change in the agency's location, see §558.213 of this division (relating to Agency Relocation).[~~;~~]

(2) For requirements on reporting a change in the agency's contact information and operating hours, see §558.214 of this division (relating to Notification Procedures for a Change in Agency Contact Information and Operating Hours).[~~;~~]

(3) For requirements on reporting a change to the agency's name, see §558.215 of this division (relating to Notification Procedures for an Agency Name Change).[~~;~~]

(4) For requirements on reporting a change in the agency's organizational management personnel, see §558.218 of this division (relating to Agency Organizational Changes).[~~;~~]

(5) For requirements on adding or deleting a category of service to the license, see §558.219 of this division (relating to Procedures for Adding or Deleting a Category to the License).[~~; and~~]

(6) For requirements on expanding or reducing the agency's service area, see §558.220 of this division (relating to Service Areas).

(7) For requirements on reporting a change in agency accreditation status, see §558.503 of this chapter (relating to Accreditation Process and Exemption from a Survey).

(b) The schedule of fees an agency must pay when the agency timely submits the application through the online portal [~~HHSC Form 2021,~~] to report changes in application information[~~,~~] is as follows.

(1) An agency is not required to pay a fee if the agency reports changes to contact information and operating hours, within the required time frame, as specified in §558.214 of this division.

(2) An agency is not required to pay a fee if the agency reports a change in the alternate administrator, within the required time frame, as specified in §558.218 of this division.

(3) An agency must pay a fee of $30 if the agency, within the required time frame, reports one or more of the following changes:

(A) a change in physical location, as specified in §558.213 of this division;

(B) a change in name (legal entity or doing business as), as specified in §558.215 of this division;

(C) a change in administrator, chief financial officer, or controlling person, as specified in §558.218 of this division;

(D) a change in category of service designated on a license, as specified in §558.219 of this division; or

(E) a change in service area, as specified in §558.220 of this division.

(4) HHSC does not consider a change of information as officially submitted until the online portal reflects a status of payment received[~~,~~] if a fee is applicable.

(c) If an agency untimely submits the application through the online portal [~~HHSC Form 2021~~] to report one or more changes referenced in subsection (a) of this section, the agency must pay a late fee of $100. If an agency must pay a fee of $30 for reporting a change referenced in subsection (b)(3) of this section, the $100 late fee is in addition to the $30 fee.

(d) If HHSC determines, based on review of an agency's renewal application, that an agency did not report a change in application information as required by this section, HHSC notifies the agency in writing of the fee amount due for payment and the method for payment.

(e) If HHSC determines, based on a survey, that an agency did not report a change in application information as required by this section, HHSC notifies the agency to submit an application through the online portal to make the change, which includes the [~~in writing of the~~] fee amount due for payment. Reporting the change and paying the required fee does not prevent [~~preclude~~] HHSC from taking other enforcement action against the agency as specified in §558.601 of this chapter (relating to Enforcement Actions).

(f) If an agency pays a fee to HHSC to report a change in application information, the fee is not refundable. HHSC accepts payment for a required fee as described in §558.3(f) of this chapter (relating to License Fees).

(g) HHSC may suspend or revoke a license or deny an application for a renewal license if an agency does not pay a fee, as required by this section, within 30 days after HHSC provides written notice of

a fee amount due for payment. Within 10 days after receipt of HHSC's written notice of a fee amount due for payment, an agency may submit proof to HHSC that the agency:

(1) submitted the application [~~HHSC Form 2021~~] to timely report a change in application information, as specified in each section [~~rule~~] referenced in subsection (a) of this section; and

(2) paid the fee amount required by this section through [~~when~~] the online portal [~~agency submitted HHSC Form 2021~~].

§558.210. Agency Place of Business and Operating Hours.

(a) An agency must not have a virtual office as its place of business.

(b) If an agency's place of business is in a co-working space, the agency must:

(1) ensure all client communication and documentation are kept confidential, secure and separate from any non-employee or non-contractor of the agency;

(2) prohibit access to the agency's electronic systems, including computers, except to agency employees and contractors; and

(3) ensure the place of business complies with this section and the requirements in §558.507 of this chapter (relating to Agency Cooperation with a Survey).

(c) [~~(a)~~] An agency must adopt and enforce a written policy identifying the agency's operating hours.

(d) [~~(b)~~] For the purposes of this section, the person in charge means the administrator, the designated alternate administrator, the supervising nurse, [~~or~~] the alternate supervising nurse, or the owner of the agency.

(e) [~~(c)~~] If an agency is closed during the agency's operating hours or between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, the agency must provide information on how to contact the person in charge directly by [~~the person in charge must~~]:

(1) posting [~~post~~] a notice in a [~~visible~~] location accessible to the public outside the agency [~~that will provide information regarding how to contact the person in charge~~]; and

(2) recording [~~leave~~] a message on an available answering machine, voicemail, or similar electronic mechanism [~~that will provide information regarding how to contact the person in charge~~].

§558.211. Display of License.

The license must be displayed in a conspicuous place in each [~~the designated~~] place of business. If the information on the license is officially amended during the licensure period, the agency will receive a new license to reflect the changes. The most current [~~a notice must be posted beside the~~] license must be posted to provide public notice of the change.

§558.213. Agency Relocation.

(a) An agency license holder must not transfer a license from one location to another without prior notice to HHSC. If an agency is considering relocation, the license holder [~~agency~~] must submit written notice to HHSC to report a change in physical location at least 30 days before the intended relocation by submitting a relocation application through the online portal, unless HHSC grants the agency an exemption from the 30-day time frame as specified in subsection (b) of this section. [~~A change in physical location for a hospice inpatient unit requires HHSC to conduct a survey to approve the new location.~~]

(b) An agency must notify HHSC immediately if an unexpected situation beyond the agency's control makes it impossible for the agency to submit the relocation application through the online portal [~~written notice to HHSC~~] no later than 30 days before the agency relocates. HHSC grants or denies the exemption.

(1) If HHSC grants the exemption, the agency must submit the relocation application through the online portal [~~written notice to HHSC~~] as described in subsection (d)[~~(c)~~] of this section within 30 days after the date HHSC grants the exemption.

(2) If HHSC denies the exemption, the agency must [~~may~~] not relocate until at least 30 days after the agency submits the relocation application through the online [~~written notice to HHSC~~], as described in subsection (d)[~~(c)~~] of this section.

(c) An agency license holder that is licensed within the hospice services category providing hospice services in an inpatient unit may not relocate a unit to another location without approval from HHSC. The license holder must submit a complete relocation application no later than 30 days before the agency relocates.

(1) Inpatient unit clients must not be relocated until the new building has been inspected and approved as meeting the Life Safety Code requirements in Subchapter H, Division 9 of this chapter (relating to Physical Environment in an Inpatient Unit).

(2) Following Life Safety Code approval by the HHSC Architectural Unit, the license holder must notify HHSC of the date the inpatient unit will be relocated. If the new inpatient unit meets the standards for operation based on an on-site survey, a license will be issued.

(3) The effective date of the license will be the date all inpatient unit clients are relocated.

(4) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the inpatient units until the date of the relocation.

(d) [~~(c)~~] An agency must report a change in physical location to HHSC in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(e) [~~(d)~~] If an agency reports a change in physical location, the agency must pay a fee and may be subject to a late fee, as described in §558.208 of this division.

(f) [~~(e)~~] HHSC sends the agency a new license [~~Notification of Change~~] reflecting the new location. The agency must post the most current [~~Notification of Change beside its~~] license in accordance with §558.211 of this division (relating to Display of License).

(g) [~~(f)~~] A Medicare-certified [~~Medicare certified~~] home health and hospice agency must comply with applicable federal laws and regulations and the requirements of this section for reporting an agency relocation. A change in physical location for a Medicare-certified agency requires HHSC review.

(h) [~~(g)~~] An agency is exempt from the requirements in subsections (a) - (e) [~~(a) - (d)~~] of this section when reporting a temporary relocation that results from the effects of an emergency or disaster, as specified in §558.256(o) of this subchapter (relating to Emergency Preparedness Planning and Implementation).

§558.214. Notification Procedures for a Change in Agency Contact Information and Operating Hours.

(a) An agency must report to HHSC no later than seven days after a change in the agency's:

(1) telephone number;

(2) mailing address, if different than the physical location; or

(3) operating hours.

(b) An agency must report the changes described in subsection (a) of this section to HHSC in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees) by submitting an application through the online portal.

(c) If an agency reports the information after the timeframes required by this section, the agency must pay a late fee as described in §558.208 of this division.

§558.215. Notification Procedures for an Agency Name Change.

(a) If an agency intends to change its name (legal entity or assumed (doing business as) name), but does not undergo a change of ownership as defined in §558.23(c) of this chapter (relating to Change of Ownership), the agency must report the name change to HHSC no later than seven days after the effective date of the name change by submitting an application through the online portal.

(b) An agency must report a name change to HHSC in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(c) If an agency reports a name change, the agency must pay a fee and may be subject to a late fee, as described in §558.208 of this division [~~(relating to Reporting Changes in Application Information and Fees)~~].

(d) After HHSC receives and verifies the required documents and information, HHSC sends the agency a new license [~~Notification of Change~~] reflecting the agency's new name. The agency must post the most current license [~~Notification of Change beside its license~~] in accordance with §558.211 of this division (relating to Display of License).

§558.216. Change in Agency Certification Status.

(a) An agency must notify HHSC [~~in writing~~] no later than five days after the agency decides to voluntarily withdraw from the Medicare program.

(1) If an agency voluntarily withdraws from the Medicare program and continues to provide services under a licensed-only category, such as licensed home health, hospice, or personal assistance services, the agency must follow the procedures for adding and deleting a category of service as required by §558.219 of this division (relating to Procedures for Adding or Deleting a Category to the License).

(2) If an agency's voluntary withdrawal from the Medicare program is based on the permanent closure of the agency, the agency must also comply with §558.217 of this division (relating to Agency Closure Procedures and Voluntary Suspension of Operations), including written notice of the voluntary closure.

(b) If an agency chooses to voluntarily withdraw from the Medicare program, or if CMS involuntarily terminates or denies its certification, the license will be affected as follows.[~~:~~]

(1) If an agency licensed to provide licensed and certified home health services has no other license categories remaining on the license after losing its Medicare certification, its license is void and the agency must cease operation. If the agency wants to resume providing services, the agency [~~it~~] must apply for an initial license under §558.13 of this chapter (relating to Obtaining an Initial License).

(2) If a Medicare-certified agency has another license category remaining on the current license and the agency wants to continue providing services under the remaining license category, HHSC surveys the agency under the remaining license category.

(c) As specified in §558.601(c)(2) of this chapter (relating to Enforcement Actions), HHSC may take enforcement action against an agency licensed to provide licensed and certified home health services if the agency fails to maintain its Medicare certification. The agency may request an administrative hearing in accordance with §558.601 of this chapter to contest the enforcement action taken by HHSC against the agency.

§558.217. Agency Closure Procedures and Voluntary Suspension of Operations.

(a) An agency, except for a hospice agency providing hospice services in an inpatient unit, must provide written notice to HHSC HCSSA Licensing Unit at least five days before permanent closure of the agency, branch office, or ADS. [~~Permanent closure. An agency must notify HHSC in writing within five days before the permanent closure of the agency, branch office, or ADS.~~]

(b) An agency that is licensed within the hospice services category providing hospice services in an inpatient unit must notify HHSC HCSSA Licensing Unit, in writing, at least 30 days before the proposed date of permanent closure of the unit.

(c) A written notice of closure or suspension of operations must include the location of the client records (active and inactive), a client roster, and the name, telephone number, email address, and mailing address of the client record custodian.

[~~(1) The agency must include in the written notice the reason for closing, the location of the client records (active and inactive), and the name and address of the client record custodian.~~]

(d) [~~(2)~~] If the agency closes with an active client roster, the agency must transfer a copy of the active client record with the client to the receiving agency in order to ensure continuity of care and services to the client.

(e) After all clients listed on the client roster have been discharged, the agency must submit an updated client roster to the HHSC HCSSA Licensing Unit indicating where each client was transferred. This submission acknowledges a cessation of operations.

(f) The previous license holder must maintain all business records, including financial records, agency contracts and agreements, and personnel records, for a minimum of five years from the date of the dissolution of the agency.

[~~(3) The agency must mail or return the initial license or renewal license to HHSC at the end of the day that services cease.~~]

(g) [~~(4)~~] If an agency continues to operate after the closure date specified in the notice, HHSC may take enforcement action under §558.601 of this chapter (relating to Enforcement Actions) against the agency for operating as an unlicensed agency.

(h) [~~(b)~~] Applicability. This subsection applies to an agency licensed to provide licensed home health services, personal assistance services, [~~and~~] licensed-only hospice services, and hospice services with an inpatient unit.

(1) Voluntary suspension of operations occurs when an agency voluntarily suspends its normal business operations for 10 or more consecutive days. A voluntary suspension of operations may not last longer than the licensure renewal period. If an agency voluntarily suspends operations, the agency must:

(A) discharge or arrange for backup services for active clients;

(B) provide written notification to the HHSC HCSSA Licensing Unit and designated survey office at least five days before the voluntary suspension of operations, or within two working days before the voluntary suspension of operations, if an emergency occurs that is beyond the agency's control; and

(C) post a notice of voluntary suspension of operations on the entry door of the agency and leave a voice message that informs callers of the voluntary suspension of operations.

(2) An agency licensed with the hospice services category with an inpatient unit must notify HHSC through the online portal indicating that the unit is ready for a Life Safety Code inspection before resuming operations after the voluntary suspension of operations. The HHSC Architectural Unit will conduct an on-site Life Safety Code inspection of the unit to determine if the inpatient unit meets the requirements in Subchapter H, Division 9 of this chapter (relating to Physical Environment in an Inpatient Unit) before resuming operations.

(3) [~~(2)~~] An agency must notify the HHSC HCSSA Licensing Unit [~~licensing unit~~] in writing, no later than seven days after resuming operations.

§558.218. Agency Organizational Changes.

(a) If a change occurs in the following management personnel, an agency must submit an application through the online portal [~~written notice to HHSC~~] no later than seven days after the date of a change in:

(1) administrator;

(2) alternate administrator;

(3) chief financial officer; or

(4) controlling person, as defined in §558.2 of this chapter (relating to Definitions).

(b) An agency must report a change in the management personnel listed in subsection (a) of this section to HHSC in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(c) If an agency reports a change in the administrator, chief financial officer, or controlling person, the agency must pay a fee and may be subject to a late fee, as described in §558.208 of this division.

(d) An agency is not required to pay a fee to report a change in alternate administrator, but the agency must pay a late fee, as described in §558.208 of this division, if the agency does not report the change within the time frame required in this section.

(e) A change in the management personnel listed in subsection (a) of this section requires HHSC evaluation and approval. HHSC reviews the required documents and information submitted. HHSC notifies an agency if the information the agency provides does not reflect that a person listed in subsection (a)(1) - (4) of this section meets the required qualifications.

§558.219. Procedures for Adding or Deleting a Category to the License.

(a) To add or delete a category of service to a license, an agency must submit the appropriate application to HHSC through the online portal at least 30 days before adding or deleting the category.

(b) The HHSC HCSSA Licensing Unit either approves or proposes to deny [~~denies~~] the application to add a category of service no later than 30 days after HHSC receives the application through the online portal, along with payment of the license fee. An agency must not provide the services under the category the agency is adding until the agency receives an updated license with the new category of service listed [~~written notice of approval from HHSC~~].

(1) To add a category of service to a license, an agency must[:]

[~~(A) be in substantial compliance with the Statute and this chapter; and~~]

[~~(B)~~] have no enforcement action pending against the license under §558.601 of this chapter (relating to Enforcement Actions).

(2) If HHSC Licensing Unit denies the application to add a category of service, HHSC Licensing Unit informs the agency of the reason for denial.

(3) HHSC may conduct a survey after the approval of a category.

(c) An agency's submission of an application to delete a category from a license does not preclude HHSC from taking enforcement action as appropriate in accordance with Subchapter F of this chapter (relating to Enforcement).

(d) An agency must submit to HHSC the application to add or delete a category of service in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(e) If an agency submits an application to add or delete a category of service, the agency must pay a fee and may be subject to a late fee, as described in §558.208 of this division.

(f) If HHSC grants an agency's application to add or delete a category of service, HHSC sends the agency a new license [~~Notification of Change~~] reflecting the change in the category of service. The agency must post the new [~~Notification of Change beside its~~] license in accordance with §558.211 of this division (relating to Display of License).

§558.220. Service Areas.

(a) An agency must identify its licensed service area when submitting an application for an initial or renewal license through the online portal. [~~A branch office or ADS must be located within the parent agency's licensed service area. An agency must not provide services outside its licensed service area, except as provided in subsections (i) and (j) of this section.~~]

(b) An agency must not provide in-person or off-site services to individuals who reside outside its licensed service area, except as provided in subsections (m) and (n) of this section.

(c) An agency that provides teleservices to clients in its service area must ensure compliance with Division 6 of this subchapter (relating to Telehealth, Telemedicine, Telemonitoring, and Telecommunication).

(d) A branch office or ADS must be located within the parent agency's licensed service area.

(e) [~~(b)~~] An agency must maintain adequate staff to provide services and to supervise the provision of services.

(f) [~~(c)~~] An agency may expand its service area at any time during the licensure period. An agency must submit an application to HHSC through the online portal to expand the agency's service area at least 30 days before the expansion, unless HHSC grants the agency an exemption from the 30-day time frame as specified in subsection (g) [~~(d)~~] of this section.

(g) [~~(d)~~] An agency is exempt from the requirement to submit an application to HHSC through the online portal no later than 30 days before the agency expands its service area if HHSC determines an emergency situation exists that would affect client health and safety.

(1) An agency must notify HHSC immediately of a possible emergency situation that would affect client health and safety.

(2) HHSC grants or denies an exemption from the 30-day application submission requirement.

(A) If HHSC grants an exemption, the agency must submit an application to HHSC through the online portal, as described in subsection (h) [~~(e)~~] of this section, no later than 30 days after the date HHSC grants the exemption.

(B) If HHSC denies an exemption, the agency may not expand the agency's service area until at least 30 days after the agency submits the written notice to HHSC, as described in subsection (h) [~~(e)~~] of this section.

(h) [~~(e)~~] If an agency intends to expand or reduce the agency's service area, the agency must submit an application to HHSC through the online portal, in accordance with §558.208 of this division [~~subchapter~~] (relating to Reporting Changes in Application Information and Fees).

(i) [~~(f)~~] If an agency reports a change in service area, the agency must pay a fee and may be subject to a late fee, as described in §558.208 of this division [~~subchapter~~].

(j) [~~(g)~~] An agency may reduce its service area at any time during the licensure period. An agency must submit an application to HHSC through the online portal informing HHSC that the agency reduced its service area, no later than 10 days after the reduction.

(k) [~~(h)~~] HHSC sends the agency a Notification of Change reflecting the change in service area. An agency is not required to post the Notification of Change [~~in service area~~] beside its license.

(l) [~~(i)~~] An agency is exempt from the requirements described in subsections (f)- (i) [~~(e) - (f)~~] of this section if a temporary expansion results from an emergency or disaster, as specified in §558.256(o) of this subchapter (relating to Emergency Preparedness Planning and Implementation).

(m) [~~(j)~~] An agency may provide temporary services to a HCSSA client outside the agency's licensed service area, but within the State of Texas, in accordance with this subsection. For [~~and, for~~] an agency licensed to provide hospice services, the agency must comply with the additional standards in §558.830 of this chapter (relating to Provision of Hospice Core Services).

(1) The agency may provide the services for no more than 60 consecutive days, unless the agency expands its service area as described in subsections (h) and (i) [~~(e) and (f)~~] of this section.

(2) The client must live [~~reside~~] in the agency's service area and must intend to return to that residence when the 60 consecutive day period ends.

(3) The client must be receiving services from the agency at the time the client leaves the agency's service area.

(4) [~~(3)~~] The agency must maintain compliance with the statute [~~Statute~~] and this chapter and, if applicable, federal home health and hospice regulations.

(5) [~~(4)~~] The agency must document in the client record the start and end dates for the temporary services.

(6) [~~(5)~~] An agency's authority to provide services to a client outside its service area may depend on regulations or requirements established by the client's private or public funding source, including a health maintenance organization or other private third-party insurance; Medicaid, under 42 United States Code Chapter 7, Subchapter XVIII; or a state-funded program. The agency is responsible for knowing these requirements.

(n) [~~(k)~~] If a client notifies an agency that the client is leaving the agency's service area and the agency does not provide services in accordance with subsection (m) [~~(j)~~] of this section, the agency must inform the client that leaving the agency's service area requires the agency to:

(1) place the client's services on hold in accordance with the agency's written policy, required by §558.281 of this subchapter (relating to Client Care Policies), until the client returns to the agency's service area;

(2) transfer and discharge the client in accordance with §558.295 of this subchapter (relating to Client Transfer or Discharge Notification Requirements) and the agency's written policy required by §558.281 of this subchapter; or

(3) discharge the client in accordance with §558.295 of this subchapter and the agency's written policy required by §558.281 of this subchapter.

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

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

TRD-202603804
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 438-3161

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DIVISION 3. AGENCY ADMINISTRATION

26 TAC §558.251

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The repeal affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.251. Peer Review.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 18, 2026
For further information, please call: (512) 438-3161

♦ ♦ ♦

26 TAC §§558.242 - 558.250

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.242. Organizational Structure and Lines of Authority.

(a) An agency must prepare and maintain a current written description of the agency's organizational structure. The document may be either in the form of a chart or a narrative.

(b) The description must include:

(1) all services provided by the agency;

(2) the governing body, administrator, alternate administrator, supervising nurse, alternate supervising nurse, advisory committee, interdisciplinary team and, for a personal assistance services agency, a supervisor position within the agency, and staff, as appropriate, based on services provided by the agency; and

(3) the lines of authority and the delegation of responsibility, [~~down to and~~] including the client care level.

§558.243. Administrative and Supervisory Responsibilities.

(a) Administrative responsibilities.

(1) A license holder, or the license holder's designee, must designate an individual to serve as the administrator of the agency. The identity of the individual must be included in the application submitted through the online portal in accordance with §558.218 of this subchapter (relating to Agency Organizational Changes). The individual must meet [~~who meets~~] the qualifications and conditions set out in §558.244 of this division (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications) to serve as the administrator of the agency.

(2) A license holder, or the license holder's designee, must designate an individual to serve as the alternate administrator. The identity of the alternate administrator must be included in the application submitted through the online portal in accordance with §558.218 of this subchapter. The alternate administrator must meet the qualifications and conditions set out in §558.244 of this division. The alternate administrator must meet the same qualifications and conditions required for an administrator to act when the administrator is absent. [~~A license holder, or the license holder's designee, must designate in writing an alternate administrator who meets the qualifications and conditions of an administrator to act in the absence of the administrator.~~]

(3) If a license holder is issued separate licenses for the purposes of creating separate business entities for multiple categories of service, the licensed agencies may share a single administrator and alternate administrator.

(4) The date of designation for an administrator and alternate administrator is the date the administrator and alternate administrator sign the job description as required by §558.246(e) of this division (relating to Personnel Records).

(b) Administrator responsibilities.

(1) An administrator must be responsible for implementing and supervising the administrative policies and operations of the agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis. An administrator must:

(A) manage the daily operations of the agency;

(B) organize and direct the agency's ongoing functions;

(C) administratively supervise the provision of quality care to agency clients;

(D) supervise to ensure implementation of agency policy and procedures;

(E) ensure that the documentation of services provided is accurate and timely;

(F) employ or contract with qualified personnel;

(G) ensure adequate staff education and evaluations, according to requirements in §558.245(b) of this division (relating to Staffing Policies);

(H) ensure the accuracy of public information materials and activities;

(I) implement an effective budgeting and accounting system that promotes the health and safety of the agency's clients; [~~and~~]

(J) supervise and evaluate client satisfaction survey reports on all clients served; and[.]

(K) develop and implement an acceptable plan of correction in response to cited deficiencies and violations.

(2) An administrator or alternate administrator must be available to agency personnel during agency operating hours. The availability must be in person, by telephone, or through telecommunications. Availability requirements must comply with this chapter, including §558.210 of this subchapter (relating to Agency Place of Business and Operating Hours), §558.404(h)(2) of this chapter (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services), §558.523 of this chapter (relating to Personnel Requirements for a Survey), and §558.527 of this chapter (relating to Plan of Removal). [~~, in person or by telephone, during the agency's operating hours and in accordance with the rules in this chapter, including §558.210 of this subchapter (relating to Agency Operating Hours), §558.404(h)(2) of this chapter (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services), §558.523 of this chapter (relating to Personnel Requirements for a Survey), and §558.527 of this chapter (relating to Post-Survey Procedures).~~]

(3) An administrator must designate, in writing, an agency employee who must provide HHSC representatives [~~surveyors~~] entry to the agency to start the survey process in accordance with §558.523 [~~§558.523(c)~~] of this chapter (relating to Personnel Requirements for

a Survey), when [if] the administrator and alternate administrator are not available.

(c) Supervision of services.

(1) Except as provided in paragraph (3) of this subsection, an agency licensed to provide licensed home health services, licensed and certified home health services, or hospice services must directly employ or contract with an individual who meets the qualifications in §558.244 of this division to serve as the supervising nurse.

(2) An agency must designate, in writing, a similarly qualified alternate to serve as supervising nurse in the absence of the supervising nurse.

(A) The supervising nurse or alternate supervising nurse must:

(i) always be available to agency personnel, in person, through telecommunications, or by telephone, to provide and supervise onsite skilled services to clients;

(ii) participate in activities relevant to services furnished, including the development of qualifications and assignment of agency personnel;

(iii) ensure that a client's plan of care or care plan is executed as written; and

(iv) ensure that an appropriate healthcare [~~health care~~] professional performs a reassessment of a client's needs:

(I) when there is a significant health status change in the client's condition;

(II) at the physician's request; or

(III) after hospital discharge.

(B) A supervising nurse may also be the administrator of the agency, if the supervising nurse meets the qualifications and conditions of an administrator described in §558.244(a) and (b) of this division.

(3) An agency that provides only physical, occupational, speech or respiratory therapy, medical social services, or nutritional counseling is not required to employ or contract with a supervising nurse. A qualified licensed professional must supervise these services, as applicable.

(4) An agency that employs two or more registered nurses must:

(A) have a workplace violence prevention committee;

(B) develop workplace violence prevention policies and procedures; and

(C) implement workplace violence requirements in accordance with Texas Health and Safety Code Chapter 331.

(d) Supervision of branch offices and ADSs. An agency must adopt and enforce a written policy relating to the supervision of branch offices, inpatient units, or ADSs, if established. This policy must be consistent with the following:

(1) for a branch office, §558.27 of this chapter (relating to Application and Issuance of an Initial Branch Office License) and §558.321 of this subchapter [~~chapter~~] (relating to Standards for Branch Offices); [~~or~~]

(2) for an inpatient unit, Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services); or

(3) [~~(2)~~] for an ADS, §558.29 of this chapter (relating to Application and Issuance of an Alternate Delivery Site License) and §558.322 of this subchapter [~~chapter~~] (relating to Standards for Alternate Delivery Sites).

§558.244. Administrator Qualifications and Conditions and Supervising Nurse Qualifications.

(a) Administrator qualifications.

(1) For an agency licensed to provide licensed home health services, licensed and certified home health services, or hospice services, the administrator and the alternate administrator must:

(A) be a licensed physician, RN, licensed social worker, licensed therapist, or licensed nursing home administrator with at least one year of management or supervisory experience in a health-related setting, such as:

(i) a HCSSA [~~home and community support services agency~~];

(ii) a hospital;

(iii) a nursing facility;

(iv) a hospice;

(v) an outpatient rehabilitation center;

(vi) a psychiatric facility;

(vii) an intermediate care facility for individuals with an intellectual disability or related conditions; or

(viii) a licensed healthcare [~~health care~~] delivery setting providing services for individuals with functional disabilities; or

(B) have a high school diploma or a general equivalency degree (GED) with at least two years of management or supervisory experience in a health-related setting, such as:

(i) a HCSSA [~~home and community support services agency~~];

(ii) a hospital;

(iii) a nursing facility;

(iv) a hospice;

(v) an outpatient rehabilitation center;

(vi) a psychiatric facility;

(vii) an intermediate care facility for individuals with an intellectual disability or related conditions; or

(viii) a licensed healthcare [~~health care~~] delivery setting providing services for individuals with functional disabilities.

(2) For an agency licensed to provide hospice services, in addition to the qualifications listed in paragraph (1)[~~(A) or (B)~~] of this subsection, the administrator and the alternate administrator must:

(A) be a hospice employee; and

(B) have any additional education and experience required by the hospice's governing body, as specified in the agency's job description.

(3) For an agency licensed to provide only personal assistance services, the administrator and the alternate administrator must meet at least one of the following qualifications:

(A) have a high school diploma or a GED with at least one year of experience or training in caring for individuals with functional disabilities;

(B) have completed two years of full-time study at an accredited college or university in a health-related field; or

(C) meet the qualifications listed in paragraph (1)[~~(A) or (B)~~] of this subsection; and[~~.~~]

(D) have completed the presurvey training or have documentation of completion of the presurvey training up to 12 months prior to the date of designation.

(b) Administrator conditions.

(1) An administrator and alternate administrator must be able to read, write, and comprehend English.

(2) An administrator and alternate administrator [~~designated as an administrator or alternate administrator for the first time on or after December 1, 2006,~~] must meet the initial educational training requirements specified in §558.259 of this division (relating to Initial Educational Training in Administration of Agencies).

(3) An administrator and alternate administrator [~~designated as an administrator or alternate administrator before December 1, 2006,~~] must meet the continuing education requirements specified in §558.260 of this division (relating to Continuing Education in Administration of Agencies).

(4) A person is not eligible to be the administrator or alternate administrator of any agency if the person was employed as an administrator or alternate administrator for an agency during a period of time when HHSC took enforcement action, under §558.601 of this chapter (relating to Enforcement Actions), against the agency that employed the person as the agency's administrator or alternate administrator [~~the administrator of an agency cited with a violation that resulted in HHSC taking enforcement action against the agency while the person was the administrator of the cited agency~~].

(A) For purposes of this paragraph, the "period of time" means the period during which the administrator or alternate administrator was employed in the last one year as an administrator or alternate administrator with the agency when HHSC took enforcement action against the agency that employed the person as the agency's administrator or alternate administrator. This paragraph applies for 12 months after the date of the enforcement action.

(B) For purposes of this paragraph, "enforcement action" means: [~~license revocation, suspension, emergency suspension of a license, denial of an application for a license, or the imposition of an injunction, but it does not include administrative or civil penalties.~~]

(i) license suspension;

(ii) immediate license suspension;

(iii) license revocation;

(iv) immediate license revocation;

(v) denial of license renewal; or

(vi) denial of renewal license application.

(C) If an agency appeals an enforcement action, in accordance with §558.601 of this chapter, the enforcement action takes effect when the agency's appeal rights are exhausted and HHSC's enforcement action is upheld. If the agency prevails and HHSC's enforcement action is not upheld, this paragraph does not apply. [~~If HHSC prevails in one enforcement action against the agency and proceeds with, but does not prevail in, another enforcement action based on some or all of the same violations, this paragraph does not apply.~~]

(5) An administrator and alternate administrator must not be convicted of an offense described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(c) Supervising nurse qualifications.

(1) For an agency without a home dialysis designation, a supervising nurse and alternate supervising nurse must each:

(A) be an RN licensed in Texas or in accordance with the Texas Board of Nursing rules, 22 TAC Chapter 220 (relating to [~~for~~] Nurse Licensure Compact) [~~(NLC)~~]; [~~and~~]

(B) have at least one year of experience as an RN within the last 36 months; and[~~.~~]

(C) have completed the presurvey training or have documentation of completion of the presurvey training up to 12 months before the date of designation.

(2) For an agency with home dialysis designation, a supervising nurse and alternate supervising nurse must each:

(A) provide onsite supervision of staff and services to clients;

(B) have completed the presurvey training; and

(C) [~~(A)~~] be an RN licensed in Texas or in accordance with the Texas Board of Nursing rules, 22 TAC Chapter 220; [~~for NLC,~~] and[~~:~~]

(i) have at least three years of current experience in hemodialysis; or

(ii) have at least two years of experience as an RN and hold a current certification from a nationally recognized board in nephrology nursing or hemodialysis; or

(D) [~~(B)~~] be a nephrologist or physician with training or demonstrated experience in the care of ESRD clients.

§558.245. Staffing Policies.

(a) An agency must adopt and enforce written staffing policies that govern all personnel used by the agency, including employees, volunteers, and contractors as outlined in subsection (b) of this section.

(b) An agency's written staffing policies must:

(1) include requirements for orientation to the policies, procedures, and objectives of the agency;

(2) include requirements for participation by all personnel in job-specific training. Agency training program policies must ensure:

(A) [~~ensure~~] personnel are properly oriented to tasks performed;

(B) personnel demonstrate [~~ensure demonstration of~~] competency for tasks when competency cannot be determined through education, license, certification, or experience;

(C) [~~ensure~~] a continuing systematic program exists for the training of all personnel; and

(D) [~~ensure~~] personnel are informed of changes in techniques, philosophies, goals, client's rights, and products relating to client's care;

(3) address participation by all personnel in appropriate employee development programs;

(4) include a written job description (statement of those functions and responsibilities that constitute job requirements) and job

qualifications (specific education and training necessary to perform the job) for each position within the agency;

(5) include procedures for processing criminal history checks and searches of the medication aide registry (MAR), the nurse aide registry (NAR), and the Search Engine for Multi-Agency Reportable Conduct (SEMARC) [~~nurse aide registry and the employee misconduct registry~~] for [~~unlicensed~~] personnel in accordance with §558.247 of this division (relating to Verification of Employability and Use of [~~Unlicensed~~] Persons as Employees, Volunteers, and Contractors);

(6) ensure annual evaluation of employee and volunteer performance;

(7) address employee and volunteer disciplinary action and procedures;

(8) address the use of volunteers, if volunteers are used by the agency. The policy must be in compliance with §558.248 of this division (relating to Volunteers);

(9) address requirements for providing and supervising services to pediatric clients which [~~. Services provided to pediatric clients~~] must be provided by staff who have been instructed and have demonstrated competency in the care of pediatric clients; and

(10) include a requirement that all personnel who are direct care staff and who have direct contact with clients (employed by or under contract with the agency) sign a statement that the personnel [~~they~~] have read, understand, and will comply with all applicable agency policies.

(c) Staff supervision may occur using telecommunications if this method is effective for meeting client needs and ensuring staff compliance.

(d) Agency training may be provided using virtual methods if techniques and clinical competencies can be learned through virtual training. If a staff member receives training in clinical tasks through virtual training, the agency supervisor for a personal assistance services agency or the supervising RN for a home health or hospice agency must verify that competencies are demonstrated and evaluated in person.

§558.246. Personnel Records.

(a) An agency must maintain a personnel record for an employee and volunteer, including for the administrator or alternate administrator regardless of ownership of the agency. [~~A personnel record may be maintained electronically if it meets the same requirements as a paper record. All information must be kept current. A personnel record must include the following:~~]

(b) All electronic personnel records must comply with §558.304 of this subchapter (relating to Standards for Electronic Record Maintenance and Storage).

(c) In addition to requirements of subsection (e) of this section, an agency must maintain a personnel record for the administrator and alternate administrator that includes documentation of initial and continuing educational training in accordance §558.259 of this division (relating to Initial Educational Training in Administration of Agencies) and §558.260 of this division (relating to Continuing Education in Administration of Agencies). The documentation must contain:

(1) the name of the class or workshop;

(2) the course content (such as the curriculum outline);

(3) the hours and dates of the training; and

(4) the name and contact information of the entity and trainer who provided the training.

(d) An agency must ensure that all personnel records are kept current and accurate.

(e) Each personnel record must include:

(1) a signed job description, including [~~and~~] qualifications for each position accepted, or a signed statement that the individual [~~person~~] read and accepted the job description and qualifications for each position accepted;

(2) an application for employment or volunteer agreement;

(3) verification of license, permit [~~permits~~], references, job experience, and educational requirements, [~~as conducted by the agency to verify qualifications for each position accepted~~];

(4) for the administrator and alternate administrator, the date of employment and date of designation to the position;

(5) [~~(4)~~] performance evaluations and disciplinary actions;

(6) [~~(5)~~] the signed statement about compliance with agency policies required by §558.245(b)(10) of this division (relating to Staffing Policies), if applicable; and

(7) [~~(6)~~] for an unlicensed employee or [~~and~~] unlicensed volunteer whose duties would or do include [~~face-to-face~~] contact with a client:

(A) a printed or electronic copy of the results of the initial and annual searches of the medication aide registry (MAR), the nurse aide registry (NAR), and the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810; [~~employee misconduct registry (EMR) obtained from the HHSC website;~~] and

(B) documentation that the employee, in accordance with §558.247(c)(2) [~~§558.247(a)(4)~~] of this division (relating to Verification of Employability and Use of [~~Unlicensed~~] Persons as Employees, Volunteers, and Contractors), or volunteer, in accordance with §558.247(h)(2) [~~§558.247(b)(4)~~] of this division, received written information about the SEMARC results [~~EMR~~].

(f) [~~(b)~~] An agency may store [~~keep~~] a complete and accurate personnel record for each employee and volunteer at any location chosen by the agency. When a personnel record is not stored at the site of a survey, the agency must provide the record to a HHSC representative on request, as required by §558.507(c) of this chapter (relating to Agency Cooperation with a Survey). [~~an employee and volunteer in any location, as determined by the agency. An agency must provide personnel records not stored at the site of a survey upon request by a HHSC surveyor, as specified in §558.507(c) of this chapter (relating to Agency Cooperation with a Survey).~~]

§558.247. Verification of Employability and Use of [~~Unlicensed~~] Persons as Employees, Volunteers, and Contractors.

(a) This section applies to an applicant for employment, an individual seeking a contract, or an individual seeking to volunteer for the agency if the individual's duties may or do include direct contact with a client. [~~The provisions in this subsection apply to an unlicensed applicant for employment and an unlicensed employee, if the person's duties would or do include face-to-face contact with a client.~~]

(b) An unlicensed employee or contractor who applies for a position that has or would have direct contact with a client is considered an unlicensed applicant and must comply with this subsection.

(1) Before an agency hires an unlicensed applicant, the agency must conduct an initial verification of employability for use of the unlicensed applicant by conducting a criminal history check.

(A) [~~(1)~~] The [~~An~~] agency must conduct an initial [~~a~~] criminal history check authorized by, and in compliance with, Texas Health and Safety Code Chapter 250 [~~(relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses)~~] for an unlicensed applicant. [~~for employment and an unlicensed employee.~~]

(B) [~~(2)~~] The agency must not employ or use an unlicensed applicant whose criminal history check includes a conviction listed in Texas Health and Safety Code §250.006 that bars employment[~~,~~] or a conviction the agency has determined is a contraindication to employment. If an applicant's [~~or employee's~~] criminal history check includes a conviction of an offense that is not listed in Texas Health and Safety Code §250.006, the agency must document its review of the conviction and its determination of whether the conviction is a contraindication to employment.

(2) [~~(3)~~] Before the agency hires an unlicensed applicant, or before an unlicensed employee's first face-to-face contact with a client, the agency must search the medication aide registry (MAR), and if applicable, the nurse aide registry (NAR) [~~search the nurse aide registry (NAR) and the employee misconduct registry (EMR) using the HHSC website~~] to determine if the applicant or employee is listed in either registry as unemployable. The agency must not employ an unlicensed applicant who is listed as unemployable in either registry.

(c) Before an agency hires or contracts with any person who may have direct contact with a client, the agency must search the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 to determine if the person is unemployable.

(1) If the person's name is on the SEMARC, the person is unemployable, and the agency may not hire or contract with the person.

(2) [~~(4)~~] The agency must provide written information about the SEMARC to any employee in compliance with the requirements listed in §561.3(c) of this title (relating to Employment and Registry Information). [~~EMR to an unlicensed employee in compliance with the requirements of 40 TAC §93.3(c) (relating to Employment and Registry Information).~~]

(d) [~~(5)~~] In addition to an [~~the~~] initial verification of employability, the agency must search the MAR, if applicable, [~~search~~] the NAR, and the SEMARC [~~the EMR~~] to determine if an [~~the~~] employee or contractor is listed as unemployable in any of these registries at least once every 12 months. [~~either registry as follows:~~]

[~~(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and~~]

[~~(B) for an employee most recently hired on or after September 1, 2009, at least every 12 months.~~]

(e) [~~(6)~~] The agency must immediately discharge an [~~unlicensed~~] employee or contractor whose duties would or do include direct [~~face-to-face~~] contact with a client when the agency becomes aware:

(1) [~~(A)~~] that the employee or contractor is listed [~~designated~~] in the MAR, the NAR, or the SEMARC [~~EMR~~] as unemployable; or

(2) [~~(B)~~] that the employee's or contractor's criminal history check reveals conviction of a crime that bars employment or that the agency has determined is a contraindication to employment.

(f) As permitted by Texas Health and Safety Code §250.003(b), an agency may employ an applicant in an emergency requiring immediate employment on a temporary or interim basis, if the applicant is not listed in the MAR, the NAR, or the SEMARC as unemployable, pending the results of a criminal history check. The agency must:

(1) request the criminal history check within 72 hours of employment; and

(2) maintain documentation of the emergency requiring temporary or interim employment.

(g) [~~(b)~~] The provisions in this subsection apply to an unlicensed applicant for a volunteer position if the person's duties would or do include direct [~~face-to-face~~] contact with a client.

(1) An agency must conduct a criminal history check before an unlicensed applicant is placed in a volunteer position [~~volunteer's first face-to-face contact with a client of the agency~~].

(2) The agency must not use the services of an unlicensed volunteer for duties that would or do include direct [~~face-to-face~~] contact with a client whose criminal history information includes a conviction that bars employment under Texas Health and Safety Code §250.006 or a conviction the agency has determined is a contraindication to employment. If an unlicensed volunteer's criminal history check includes a conviction of an offense that is not listed in Texas Health and Safety Code §250.006, the agency must document its review of the conviction and its determination of whether the conviction is a contraindication to employment.

(3) Before an unlicensed volunteer's first direct [~~face-to-face~~] contact with a client, the agency must conduct a search of the MAR, if applicable, [~~NAR~~] and the NAR [~~EMR using the HHSC website~~] to determine if an unlicensed volunteer is listed [~~in either registry~~] as unemployable. The agency must not use the services of an unlicensed volunteer who is listed as unemployable in either registry.

[~~(4) The agency must provide written information about the EMR that complies with the requirements of 40 TAC §93.3(c) to an unlicensed volunteer within five working days from the date of the person's first face-to-face contact with a client~~].

(h) The provisions in this subsection apply to a licensed or unlicensed applicant for a volunteer position if the person may have direct contact with a client.

(1) Before an agency may place a person in a volunteer position that may have direct contact with a client, the agency must search the SEMARC established under Texas Health and Safety Code Chapter 810 to determine if the person is unemployable. If the person's name is on the SEMARC, the person is unemployable, and the agency may not use the services of the volunteer.

(2) The agency must provide written information about the SEMARC to a volunteer who may have direct contact with a client in compliance with the requirements listed in §561.3(c) of this title.

(i) [~~(5)~~] In addition to the initial verification of employability, the agency must search the MAR, if applicable, [~~NAR~~] and the NAR at least every 12 months [~~EMR~~] to determine if an unlicensed [~~a~~] volunteer whose duties would or do include direct contact with a client is listed as unemployable. [~~is designated in either registry as unemployable, as follows:~~]

[~~(A) for a volunteer with face-to-face contact with a client for the first time before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and~~]

[(B) for a volunteer with face-to-face contact with a client for the first time on or after September 1, 2009, at least every twelve months.]

(j) [(6)] The agency must immediately stop using the services of an unlicensed volunteer for duties that would or do include direct [face-to-face] contact with a client when the agency becomes aware that:

(1) [(A)] the unlicensed volunteer is listed [designated] in the MAR or the NAR as unemployable [or the EMR as unemployable]; or

(2) [(B)] the unlicensed volunteer's criminal history check reveals conviction of a crime that bars employment or that the agency has determined is a contraindication to employment.

(k) In addition to the initial verification of employability, an agency must search SEMARC at least every 12 months to determine if a licensed or unlicensed volunteer who may have direct contact with a client is listed in the SEMARC as unemployable.

(l) The agency must immediately stop using the services of a licensed or unlicensed volunteer who may have direct contact with a client when the agency becomes aware that the volunteer is listed in the SEMARC as unemployable.

(m) An agency shall suspend the employment or contract of a person whom HHSC finds has engaged in reportable conduct under Texas Health and Safety Code Chapter 253 while the person exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review conducted in accordance with Texas Health and Safety Code §253.004 or §253.005, pending a final decision by an administrative law judge. The agency may not reinstate the person's employment or contract during the course of any applicable appeals process.

(n) [(c)] Upon request by HHSC, an agency must provide documentation to demonstrate compliance with subsections (b) - (m) [(a) and (b)] of this section.

(o) [(d)] An agency that contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement must also comply with the requirements in §558.289(c) and (d) [§558.289(c)-(d)] of this subchapter (relating to Independent Contractors and Arranged Services).

§558.248. Volunteers.

(a) This section applies to all licensed agencies. However, agencies certified by CMS to provide hospice services also must comply with 42 CFR §418.78, Conditions of Participation--Volunteers.

(b) An agency may use volunteers in medical, healthcare professional, administrative, and direct client care roles, such as attendants, home health aides, and hospice aides.

(c) [(b)] If an agency uses volunteers, the agency must use volunteers in defined roles under the supervision of a designated agency employee.

(1) A volunteer must meet the same requirements and standards in this chapter that apply to agency employees performing the same activities.

[(2) An agency may use volunteers in administrative and direct client care roles.]

(2) [(3)] Volunteers must document services provided to a client and, if applicable, services provided to the client's family.

§558.249. [Self-Reported] Incidents of Abuse, Neglect, and Exploitation.

(a) The following terms in this section or §558.250 of this division (relating to Agency Investigations) [words and terms, when used in this section or §558.250 of this division (relating to Agency Investigations),] have the following meanings, unless the context clearly indicates otherwise.

[(1) Abuse, neglect, and exploitation--Have the meanings assigned by:]

[(A) Chapter 711, Subchapter A of this title (relating to Introduction), if the term is used in connection with alleged conduct against a child or an adult receiving services from certain providers, as defined in Texas Human Resources Code §48.251, or against a child receiving services from an agency, as that term is defined in this chapter, whose employee is the alleged perpetrator; or]

[(B) 40 TAC Chapter 705, Subchapter A (relating to Definitions), if the term is used in connection with alleged conduct against an adult, other than as described in subparagraph (A) of this paragraph.]

[(2) Adult--A client who is:]

[(A) 18 years of age or older; or]

[(B) under 18 years of age who:]

[(i) is or has been married; or]

[(ii) has had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.]

(1) [(3)] Agent--An individual such as student or volunteer, [(e.g., student, volunteer),] not employed by but working under the auspices of an agency.

(2) [(4)] Cause to believe--An agency knows, suspects, or receives an allegation about [regarding] abuse, neglect, or exploitation (ANE).

[(5) Child--A client under 18 years of age who:]

[(A) is not and has not been married; or]

[(B) has not had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.]

(3) [(6)] Employee--An officer, an individual directly employed by an agency or a contractor, volunteer, or agent working under the auspices of an agency.

(b) An agency must adopt and enforce a written policy that explains the agency's procedures for preventing, detecting, and reporting alleged acts of ANE of a client by an agency employee to HHSC Complaint and Incident Intake (CII). [relating to the agency's procedures for reporting alleged acts of abuse, neglect, and exploitation of a client by an employee of the agency.]

(c) If an agency has cause to believe that a client served by the agency has been abused, neglected, or exploited by an agency employee, the agency must report the alleged ANE to HHSC CII, through the online portal, by calling 1-800-458-9858, or through email immediately but not later than one hour after suspecting or learning of the incident. The following information must be reported to HHSC CII: [the information immediately, meaning within 24 hours, to:]

(1) name, age, and address of the client; [the Department of Family and Protective Services (DFPS) at 1-800-252-5400, or through the DFPS secure website at www.txabusehotline.org; and]

(2) name and address of the LAR, if available; [~~HHSC at 1-800-458-9858.~~]

(3) nature and extent of the client's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

§558.250. Agency Investigations.

(a) Written policy.

(1) An agency must adopt and enforce a written policy relating to the agency's procedures for investigating complaints and reports of abuse, neglect, and exploitation (ANE).

(2) The policy must meet the requirements of this section.

(b) Reports of ANE [~~abuse, neglect, and exploitation (ANE)~~].

(1) Immediately upon witnessing the act or upon receipt of the allegation, an agency must initiate an investigation of known and alleged acts of ANE of a client by agency employees, including volunteers and contractors.

(2) An agency must complete an HHSC Provider Investigation Report form and include the following information:

(A) incident date;

(B) the name and address of the agency reporting the incident;

(C) [~~(B)~~] the name of the alleged victim;

(D) the alleged victim's diagnosis and cognitive status;

(E) [~~(C)~~] the age of the alleged victim at the time of the incident;

(F) the name of the LAR or party responsible for the victim, if applicable;

(G) [~~(D)~~] the name of the alleged perpetrator;

(H) copies of the most recent checks on the Search Engine for Multi-Agency Reportable Conduct (SEMARC), MAR, if applicable, and NAR;

(I) the date that the criminal history check was completed;

(J) [~~(E)~~] any witnesses;

(K) [~~(F)~~] the allegation;

(L) [~~(G)~~] any injury or adverse effect;

(M) [~~(H)~~] any assessments made;

(N) [~~(I)~~] any treatment required;

(O) [~~(J)~~] the investigation summary; and

(P) [~~(K)~~] any action taken.

(3) The agency must submit the completed HHSC Provider Investigation Report (Form 3613) using the online portal or by email no later than the 10th day after the agency reports the alleged ANE to HHSC CII. [~~An agency must send the completed HHSC Provider Investigation Report form to HHSC Complaint Intake Unit no later than the 10th day after reporting the act to the Department of Family and Protective Services and HHSC.~~]

(c) Non-abuse, neglect, or exploitation agency [~~Agency~~] complaint investigations.

(1) An agency must investigate non-abuse, neglect, or exploitation complaints made by a client, a client's family or guardian, or a client's healthcare [~~health care~~] provider, in accordance with this subsection, regarding:

(A) treatment or care that was furnished by the agency;

(B) treatment or care that the agency failed to furnish; or

(C) a lack of respect for the client's property by anyone furnishing services on behalf of the agency.

(2) An agency must:

(A) document receipt of the complaint and initiate a complaint investigation within 10 days after the agency's receipt of the complaint; and

(B) document all components of the investigation.

(d) Completing agency investigations. An agency must complete the investigation and documentation within 30 days after the agency receives a complaint [~~or report of abuse, neglect, and exploitation,~~] unless the agency has and documents reasonable cause for a delay.

(e) Retaliation.

(1) An agency may not retaliate against an employee, service provider, client, or other person for [~~a person for~~] filing a complaint, presenting a grievance, or providing, in good faith, information relating to home health, hospice, or personal assistance services provided by the agency, including:[~~.~~]

(A) use of seclusion; and

(B) use of restraint not in compliance with federal and state laws, rules, and regulations.

(2) An agency is not prohibited from terminating an employee for a reason other than retaliation.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

♦ ♦ ♦

26 TAC §§558.251, 558.252, 558.256, 558.257, 558.259 - 558.261

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code

Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments and new sections affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.251. Reporting Abuse, Neglect, and Exploitation.

An agency must:

(1) ensure that a client and LAR, at the time the client begins receiving services and at least annually thereafter, are:

(A) informed of how to report allegations of abuse, neglect, or exploitation (ANE) to HHSC Complaint and Incident Intake (CII); and

(B) educated about protecting the client from ANE;

(2) ensure that each employee, contractor, and volunteer are trained and knowledgeable of:

(A) the procedure for reporting ANE to HHSC CII;

(B) the signs and symptoms of ANE;

(C) the methods to prevent ANE; and

(D) the process for assisting a client, or any person knowledgeable of alleged ANE, in making a report to HHSC CII;

(3) ensure that each employee, volunteer, and contractor sign an acknowledgement of understanding that all clients have the right to be free of ANE;

(4) ensure that each employee, volunteer, and contractor sign an acknowledgement of possible criminal liability under Texas Human Resources Code §48.052, if the person has cause to believe that a client has been abused, neglected, or exploited, or is in the state of abuse, neglect, or exploitation and knowingly fails to report immediately to HHSC; and

(5) conduct the activities described in paragraphs (2), (3) and (4) of this subsection before an employee, volunteer, or contractor assumes job duties and at least annually thereafter.

§558.252. Financial Solvency and Business Records.

An agency must have the financial ability to carry out its functions.

(1) An agency must not intentionally or knowingly pay employees or contracted staff with checks from accounts with insufficient funds.

(2) An agency must have sufficient funds to meet its payroll.

(3) An agency must make available to HHSC, upon request, business records relating to its ability to carry out its functions. If there is a question relating to the accuracy of the records or the agency's financial ability to carry out its functions, HHSC or its designee may conduct a more extensive review of the records.

(4) An agency must maintain business records as originally created, either as hard copies or electronic records, in compliance with §558.304 of this subchapter (relating to Standards for Electronic Record Maintenance and Storage). Each entry must be correct and show the date it was made. Correction fluid and correction tape may not be used in the records. Corrections must follow standard accounting practices. [~~An agency must maintain business records in their original state. Each entry must be accurate and dated with the date of entry. Correction fluid or tape may not be used in the record. Corrections must be made in accordance with standard accounting practices.~~]

§558.256. Emergency Preparedness Planning and Implementation.

(a) An agency must have a written emergency preparedness and response plan that comprehensively describes its approach to a disaster that could affect the need for its services or its ability to provide those services. The written plan must be based on a risk assessment that identifies the disasters from natural and man-made causes that are likely to occur in the agency's service area. Except for a freestanding [~~hospice~~] inpatient unit, HHSC does not require an agency to physically evacuate or transport a client.

(b) Agency personnel that must be involved with developing, maintaining, and implementing an agency's emergency preparedness and response plan include:

(1) the administrator;

(2) the supervising nurse, if the agency is required to employ or contract with a supervising nurse, as required by §558.243 of this division [~~subchapter~~] (relating to Administrative and Supervisory Responsibilities);

(3) the agency disaster coordinator; and

(4) the alternate disaster coordinator.

(c) An agency's written emergency preparedness and response plan must:

(1) designate, by title, an employee, and at least one alternate employee, to act as the agency's disaster coordinator;

(2) include a continuity of operations business plan that addresses emergency financial needs, essential functions for client services, critical personnel, and how to return to normal operations as quickly as possible;

(3) include how the agency will monitor disaster-related news and information, including after hours, weekends, and holidays, to receive warnings of imminent and occurring disasters;

(4) include procedures to release client information in the event of a disaster, in accordance with the agency's written policy required by §558.301(a)(2) of this subchapter (relating to Client Records); and

(5) describe the actions and responsibilities of agency staff in each phase of emergency planning, including mitigation, preparedness, response, and recovery.

(d) The response and recovery phases of the plan must describe:

(1) the actions and responsibilities of agency staff when warning of an emergency is not provided;

(2) who at the agency will initiate each phase;

(3) a primary mode of communication and alternate communication or alert systems in the event of telephone or power failure; and

(4) procedures for communicating with:

(A) staff;

(B) clients or persons responsible for a client's emergency response plan;

(C) local, state, and federal emergency management agencies; and

(D) other entities, including HHSC and other healthcare [~~health care~~] providers and suppliers.

(e) An agency's emergency preparedness and response plan must include procedures to triage clients that allow the agency to:

(1) readily access recorded information about an active client's triage category in the event of an emergency to implement the agency's response and recovery phases, as described in subsection (d) of this section; and

(2) categorize clients into groups based on:

(A) the services the agency provides to a client;

(B) the client's need for continuity of the services the agency provides; and

(C) the availability of someone to assume responsibility for a client's emergency response plan, if needed by the client.

(f) The agency's emergency preparedness and response plan must include procedures to identify a client who may need evacuation assistance from local or state jurisdictions because the client:

(1) cannot provide or arrange for his or her transportation; or

(2) has special healthcare [~~health care~~] needs requiring special transportation assistance.

(g) If the agency identifies a client who may need evacuation assistance, as described in subsection (f) of this section, agency personnel must provide the client with the amount of assistance the client requests to complete the registration process for evacuation assistance, if the client:

(1) wants to register with the State of Texas Emergency Assistance Registry (STEAR), if available within the service area, accessed by dialing 2-1-1; and

(2) is not already registered, as reported by the client or the LAR [~~legally authorized representative~~].

(h) An agency must provide and discuss the following information about emergency preparedness with each client:

(1) the actions and responsibilities of agency staff during and immediately following an emergency;

(2) the client's responsibilities in the agency's emergency preparedness and response plan;

(3) materials that describe survival tips and plans for evacuation and sheltering in place; and

(4) a list of community disaster resources that may assist a client during a disaster, including the STEAR, for which registration is available through 2-1-1 Texas, and other community disaster resources provided by local, state, and federal emergency management agencies. An agency's list of community disaster resources must include information on how to contact the resources directly or instructions to call 2-1-1 for more information about community disaster resources.

(i) An agency must orient and train employees, volunteers, and contractors about their responsibilities in the agency's emergency preparedness and response plan.

(j) An agency must complete an internal review of the plan at least annually, and after each actual emergency response, to evaluate its effectiveness and to update the plan as needed.

(k) As part of the annual internal review, an agency must test the response phase of its emergency preparedness and response plan in a planned drill, if not tested during an actual emergency response. Except for a freestanding [~~hospice~~] inpatient unit, a planned drill can be limited to the agency's procedures for communicating with staff.

(l) An agency must make a good faith effort to comply with the requirements of this section during a disaster. If the agency is unable to comply with any of the requirements of this section, it must document in the agency's records attempts of staff to follow procedures outlined in the agency's emergency preparedness and response plan.

(m) An agency is not required to continue to provide care to clients in emergency situations that are beyond the agency's control and that make it impossible to provide services, such as when roads are impassable or when a client relocates to a place unknown to the agency. An agency may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area for the agency to reach its clients.

(n) If written records are damaged during a disaster, the agency must not reproduce or recreate client records, except from existing electronic records. Records reproduced from existing electronic records must include:

(1) the date the record was reproduced;

(2) the agency staff member who reproduced the record; and

(3) how the original record was damaged.

(o) Notwithstanding the provisions specified in Division 2 of this subchapter (relating to Conditions of a License), no later than five working days after an agency temporarily relocates a place of business, or temporarily expands its service area resulting from the effects of an emergency or disaster, an agency must notify and provide the following information to the HHSC HCSSA Licensing Unit [~~Home and Community Support Services Agencies licensing unit~~]:

(1) if temporarily relocating a place of business:

(A) the license number for the place of business and the date of relocation;

(B) the physical address and phone number of the location; and

(C) the date the agency returns to a place of business after the relocation; or

(2) if temporarily expanding the service area to provide services during a disaster:

(A) the license number and revised boundaries of the service area;

(B) the date the expansion begins; and

(C) the date the expansion ends.

(p) An agency must provide the notice and information described in subsection (o) of this section to the HHSC HCSSA Licensing Unit by email. If email is not available, the agency may notify the HHSC Licensing Unit by telephone or fax but must provide the notice and information in writing by email as soon as possible. If communication with the HHSC Licensing Unit is not possible, the agency must provide the notice and information by email, or telephone to the designated survey office. [~~by fax or email. If fax and email are unavailable, the agency may notify the HHSC licensing unit by telephone but must provide the notice and information in writing as soon as possible. If communication with the HHSC licensing unit is not possible, the agency must provide the notice and information by fax, email, or telephone to the designated survey office.~~]

(q) Emergency Response System.

(1) The agency administrator and alternate administrator must enroll in an emergency communication system in accordance with instructions from HHSC.

(2) The agency must respond to requests for information received through the emergency communication system in the format established by HHSC.

§558.257. Medicare Certification Optional.

(a) An agency that applies for the category of licensed and certified home health services must comply with the regulations in[,] the Medicare Conditions of Participation for Home Health Agencies, 42 CFR Part 484, pending approval of certification granted by CMS. After HHSC receives written approval from CMS via the Medicare Administrative Contractor, HHSC amends the licensing status of the agency to include the licensed and certified home health services category.

(b) An agency providing hospice services and applying for participation in the Medicare program must comply with the Medicare Conditions of Participation for Hospice Care, 42 CFR Part 418, pending approval of certification granted by CMS. After HHSC receives written approval from CMS via the Medicare Administrative Contractor, HHSC enters the hospice provider number issued by CMS into the online portal [~~its Home and Community Support Services Agencies database~~] but does not amend the hospice services category on the license.

§558.259. Initial Educational Training in Administration of Agencies.

(a) This section applies to all newly designated administrators and alternate administrators [~~only to an administrator and alternate administrator designated as an administrator or alternate administrator for the first time on or after December 1, 2006~~].

(b) In this section, "newly designated administrator" or "alternate administrator" is an individual who:

(1) is designated as administrator or alternate administrator for the first time at any agency; or

(2) has a break in designation longer than 12 months from the date of the individual's last designation as administrator or alternate administrator.

(c) [~~(b)~~] In addition to the qualifications and conditions described in §558.244 of this division (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications), a first-time administrator and alternate administrator of an agency must each complete a total of 24 [~~clock~~] hours of educational training consisting of: [~~in the administration of an agency before the end of the first 12 months after designation to the position.~~]

(1) an initial eight hours of educational training in the administration of an agency before designation to the position; and

(2) 16 hours of educational training within the first 12 months after being designated to the position; or

(3) the total 24 hours of educational training completed within the 12 months immediately before the date of designation.

(d) [~~(c)~~] Prior to designation, a first-time administrator or alternate administrator must complete the HHSC Presurvey Training and the initial eight [~~clock~~] hours of educational training in the administration of an agency. The initial eight [~~clock~~] hours must be completed during the 12 months immediately before [~~preceding~~] the date of designation to the position.

(e) The initial eight [~~clock~~] hours must include:

(1) information on the licensing standards for an agency; and

(2) information on the state and federal laws applicable to an agency, including:

(A) Texas Health and Safety Code Chapters 142 and 250;[.]

(B) Texas Human Resources Code Chapter 102, Rights of the Elderly;

(C) the Americans with Disabilities Act;

(D) the Civil Rights Act of 1991;

(E) the Rehabilitation Act of 1993;

(F) the Family and Medical Leave Act of 1993; and

(G) the Occupational Safety and Health Administration requirements.

(f) [~~(d) A first-time administrator and alternate administrator must complete an additional 16 clock hours of educational training before the end of the first 12 months after designation to the position. Any of the additional 16 clock hours may be completed prior to designation, if completed during the 12 months immediately preceding the date of designation to the position.~~] The additional 16 [~~clock~~] hours must include the following subjects and may include other topics related to the duties of an administrator:

(1) information regarding fraud and abuse detection and prevention;

(2) legal issues regarding advance directives;

(3) client rights, including the right to confidentiality;

(4) agency responsibilities;

(5) complaint investigation and resolution;

(6) emergency preparedness planning and implementation;

(7) abuse, neglect, and exploitation;

(8) infection control;

(9) nutrition (for agencies licensed to provide inpatient hospice services); and

(10) the Outcome and Assessment Information Set (OASIS) (for agencies licensed to provide licensed and certified home health services).

(g) [~~(e)~~] The 24-hour educational training requirement described in subsection (c) [~~(b)~~] of this section must be met through structured, formalized classes, correspondence courses, competency-based computer courses, training videos, distance learning programs, or off-site training courses. Subject matter that deals with the internal affairs of an organization does not qualify for credit.

(1) The training must be provided or produced by:

(A) an academic institution;

(B) a recognized state or national organization or association;

(C) an independent contractor who consults with agencies; or

(D) an agency.

(2) If an agency or independent contractor provides or produces the training, the agency must ensure the training includes:

[~~training must be approved by HHSC or recognized by a state or national organization or association. The agency must maintain documentation of this approval or recognition for review by HHSC surveyors.~~]

(A) information and education that complies with current professional standards of practice;

(B) learning objectives relevant to the administration of an agency;

(C) the topics listed in subsections (e) and (f) of this section; and

(D) other topics related to the duties of an administrator.

(3) A first-time administrator and alternate administrator may apply joint training provided by HHSC toward the 24 hours of educational training required by this section if the joint training meets the educational training requirements described in subsections (d) and (f) [~~(e) and (d)~~] of this section.

(h) [~~(f)~~] The agency must maintain documentation [~~Documentation~~] of administrator and alternate administrator training and ensure the documentation [~~must~~]:

(1) is [~~be~~] on file at the agency in the administrator's and alternate administrator's personnel record; and

(2) contains [~~contain~~] the name of the class or workshop, the course content (such as the curriculum), the hours and dates of the training, and the name and contact information of the entity and trainer who provided the training.

(i) [~~(g)~~] A first-time administrator and alternate administrator must not apply the HHSC Presurvey Training toward the 24 hours of educational training required in this section.

(j) [~~(h)~~] After completing the 24 hours of initial educational training prior to or during the first 12 months after designation as a first-time administrator and alternate administrator, an administrator and alternate administrator must complete the continuing education requirements as specified in §558.260 of this division (relating to Continuing Education in Administration of Agencies) in each subsequent 12-month period after designation.

§558.260. Continuing Education in Administration of Agencies.

(a) This section applies to all administrators and alternate administrators in the second and subsequent years of designation to the position.

(b) An administrator or alternate administrator with a break in designation longer than 12 months from the date of last designation to the position is considered a newly designated administrator under §558.259 of this division (relating to Initial Educational Training in Administration of Agencies).

(c) [~~(a)~~] In addition to the qualifications and conditions described in §558.244 of this division (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications), an administrator and alternate administrator must complete 12 clock hours of continuing education within each 12-month period beginning with the anniversary of the initial date of designation by the agency.

(d) The 12 clock hours of continuing education must include at least two of the following topics and may include other topics related to the duties of an administrator:

[~~(1) any one of the educational training subjects listed in §558.259(d) of this division (relating to Initial Educational Training in Administration of Agencies);~~]

(1) [~~(2)~~] development and interpretation of agency policies;

(2) [~~(3)~~] basic principles of management in a licensed health-related setting;

(3) [~~(4)~~] ethics;

(4) [~~(5)~~] quality improvement;

(5) [~~(6)~~] risk assessment and management;

(6) [~~(7)~~] financial management;

(7) [~~(8)~~] skills for working with clients, families, and other professional service providers;

(8) [~~(9)~~] community resources; [~~or~~]

(9) [~~(10)~~] marketing;[~~.~~]

(10) information regarding fraud and abuse detection and prevention;

(11) legal issues regarding advance directives, supported decision-making agreements, or guardianship alternatives;

(12) client rights, including the right to confidentiality and Texas Human Resources Code Chapter 102;

(13) agency responsibilities;

(14) complaint investigation and resolution;

(15) infection control;

(16) client nutrition for agencies licensed to provide hospice services to inpatient units including comfort feeding; or

(17) the Outcome and Assessment Information Set (OASIS) for agencies licensed to provide licensed and certified home health services.

[~~(b) This subsection applies only to an agency administrator or alternate administrator designated as an agency administrator or alternate administrator before December 1, 2006, who has not served as an administrator or alternate administrator for 180 days or more immediately preceding the date of designation. Within the first 12 months after the date of designation, at least eight of the 12 clock hours of continuing education must include the topics listed in §558.259(c) of this division. The remaining four hours of continuing education must include topics related to the duties of an administrator and may include the topics listed in subsection (a) of this section.~~]

(e) [~~(c)~~] Documentation of administrator and alternate administrator continuing education must:

(1) be on file at the agency; and

(2) contain the name of the class or workshop, the topics covered, and the hours and dates of the training.

(f) [~~(d)~~] An administrator or alternate administrator must not apply the HHSC Presurvey Training toward the continuing education requirements in this section.

§558.261. Peer Review.

An agency must adopt and enforce a written policy to ensure that all professional disciplines comply with their respective professional practice acts or title acts relating to reporting and peer review.

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

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Karen Ray
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Health and Human Services Commission
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For further information, please call: (512) 438-3161

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DIVISION 4. PROVISION AND COORDINATION OF TREATMENT SERVICES

26 TAC §§558.281 - 558.283, 558.285, 558.287 - 558.292, 558.295, 558.297, 558.304

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments and new section affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.281. Client Care Policies.

An agency must adopt and enforce a written policy that specifies the agency's client care practices. The written policy must include the following elements if covered under the scope of services provided by the agency:

(1) initial assessment, reassessment;

(2) start of care, placing services on hold, transfer, and discharge;

(3) intravenous services;

(4) care of the pediatric client;

(5) triaging clients in the event of disaster;

(6) how to handle emergencies in the home;

(7) safety of staff;

(8) available methods of effective communication between the agency and the client or the LAR based on the client's needs;

(9) [~~(8)~~] procedures the staff will perform for clients, such as dressing changes, Foley catheter changes, wound irrigation, administration of medication;

(10) [~~(9)~~] psychiatric nursing procedures;

(11) [~~(10)~~] patient and caregiver teaching relating to disease process/procedures;

(12) [~~(11)~~] care planning;

(13) [~~(12)~~] care of a client who has a terminal illness or a terminal prognosis;

(14) [~~(13)~~] receiving physician orders;

(15) [~~(14)~~] performing waived testing;

(16) [~~(15)~~] medication monitoring; [~~and~~]

(17) provision of home health or hospice services through teleservices in accordance with Division 6 of this subchapter (relating to Telehealth, Telemedicine, Telemonitoring, and Telecommunication); and

(18) [~~(16)~~] anything else pertaining to client care.

§558.282. Client Conduct and Responsibility and Client Rights.

(a) An agency must adopt and enforce a written policy governing client conduct and responsibility and client rights, in accordance with this section. The written policy must include a grievance mechanism under which a client can participate without fear of reprisal.

(b) An agency must protect and promote the rights of all clients.

(c) An agency must comply with the provisions of the Texas Human Resources Code Chapter 102, which applies to a client 60 years of age or older.

(d) At the time of admission, an agency must provide the [~~a~~] client and the LAR and family members, if applicable, when the client [~~who~~] receives licensed home health services, licensed and certified home health services, hospice services, or personal assistance services[~~,~~] with:

(1) a handout that lists the client's rights as listed in subsection (f) of this section; and

(2) a written statement that informs the client that a complaint against the agency may be directed to HHSC Complaint and Incident Intake, P.O. Box 149030, Austin, Texas 78714-9030, toll free 1-800-458-9858. The statement also may inform the client that a complaint against the agency may be directed to the administrator of the agency. The statement about complaints directed to the administrator also must include the time frame in which the agency reviews and resolves a complaint.

(e) Before care begins or at the initial evaluation visit, an agency must provide the client or the client's LAR with a written notice that explains all policies about client conduct, client responsibility, and client rights. [~~In advance of furnishing care to a client, or during the initial evaluation visit before the initiation of treatment, an agency must provide the client, or their legal representative, with a written notice of all policies governing client conduct and responsibility and client rights.~~]

(f) A client has the following rights.[~~:~~]

(1) A client has the right to receive advance notice about care and services that the provider can or cannot deliver, based on assessment of client need, available service types, plan of care, expected outcomes, barriers to treatment, and any changes in care. The agency must obtain written informed consent from each client or client's LAR, on a form specifying care and services that may or may not be provided by agency. The client or the client's LAR must sign or mark the written informed consent form. [~~be informed in advance about the care to be furnished, the plan of care, expected outcomes, barriers to treatment, and any changes in the care to be furnished. The agency must ensure that written informed consent, specifying the type of care and services that may be provided by the agency, has been obtained for every client,~~

either from the client or their legal representative. The client or the legal representative must sign or mark the consent form.]

(2) A client has the right to participate in planning the care or treatment and any [in planning a] change in the care or treatment.

(A) An agency must advise or consult with the client or the LAR before making [legal representative in advance of] any change in [the] care or treatment.

(B) A client has the right to refuse care and services.

(C) A client has the right to be informed, before care is initiated, of the extent to which payment may be expected from the client, a third-party payer, and any other source of funding known to the agency.

(3) A client has the right to have assistance in understanding and exercising the client's rights. The agency must maintain documentation showing that the agency [it] has complied with the requirements of this paragraph and that the client demonstrates understanding of the client's rights.

(4) A client has the right to exercise rights as a client of the agency.

(5) A client has the right to have the client's person and property treated with consideration, respect, and full recognition of the client's individuality and personal needs.

(6) A client has the right to be free from all forms of abuse, neglect, and exploitation, as defined in §558.2 of this chapter (relating to Definitions) and in accordance with §558.249 of this subchapter (relating to Incidents of Abuse, Neglect, and Exploitation) [by an agency employee, volunteer, or contractor].

(7) A client has the right to confidential treatment of the client's personal and medical records.

(8) A client has the right to voice grievances regarding treatment or care that is, or fails to be, furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the agency, and the client [they] must not be subjected to discrimination or reprisal for doing so.

(g) In the case of a client who is deemed incapacitated, [adjudged incompetent,] the rights of the client are exercised by the person appointed by law to act on the client's behalf under Texas Estates Code Chapter 1151.

(h) In the case of a client who has not been deemed [adjudged] incompetent, the LAR [any legal representative] may exercise the client's rights to the extent permitted by law.

§558.283. Advance Directives.

(a) An agency must maintain a written policy regarding implementation of advance directives. The policy must comply with the Advance Directives Act, Texas Health and Safety Code Chapter 166. The policy must include a clear and precise statement of any common lifesaving procedure the agency is unwilling or unable to provide or withhold in accordance with an advance directive.

(b) The agency must provide written notice to a client of the written policy required by subsection (a) of this section. The notice must be provided at the earlier of:

(1) the time the client is admitted to receive services from the agency; or

(2) the time the agency begins providing care to the client.

(c) If, at the time notice must be provided under subsection (b) of this section, the client is incompetent or otherwise incapacitated and unable to receive the notice, the agency must provide the required written notice, in the following order of preference, to:

(1) the client's legal guardian;

(2) a person responsible for the healthcare [health care] decisions of the client;

(3) the client's spouse;

(4) the client's adult child;

(5) the client's parent; or

(6) the person admitting the client.

(d) If subsection (c) of this section applies, except as provided by subsection (e) of this section, and an agency is unable, after a diligent search, to locate an individual listed by subsection (c) of this section, the agency is not required to provide the notice.

(e) If a client who was incompetent or otherwise incapacitated and unable to receive the notice required by this section, at the time notice was to be provided under subsection (b) of this section, later becomes able to receive the notice, the agency must provide the written notice at the time the client becomes able to receive the notice.

[(f) HHSC assesses an administrative penalty of $500 without an opportunity to correct against an agency that violates this section.]

§558.285. Infection Control.

(a) An agency must adopt and enforce written policies addressing infection control, including the prevention of the spread of infectious and communicable disease. The policies must:

(1) ensure compliance by the agency, its employees, and its contractors with:

(A) Texas Health and Safety Code Chapter 81, relating to prevention and control of communicable diseases;

(B) Occupational Safety and Health Administration regulations relating to Bloodborne Pathogens at, 29 CFR Part 1910.1030, and Appendix A to that section; and

(C) Texas Health and Safety Code Chapter 85, Subchapter I, concerning the prevention of the transmission of human immunodeficiency virus and hepatitis B virus; [and]

(2) address measures the agency will take to prevent the spread of communicable and infectious diseases, including the usage of personal protective equipment; and

(3) [(2)] require documentation of infections that the client acquires while receiving services from the agency.

(A) If an agency is licensed to provide services other than personal assistance services, documentation must include the date that the infection was detected, the client's name, primary diagnosis, signs and symptoms, type of infection, pathogens identified, and treatment.

(B) If an agency is licensed to provide only personal assistance services, documentation must include the date that the infection was disclosed to the agency employee, the client's name, and treatment as disclosed by the client.

(b) An agency must require the designation of an infection control officer to:

(1) receive notification of a potential exposure to a reportable disease from an agency;

(2) monitor relevant community threats to health and safety based on case information in all locations within the agency's service area;

(3) notify the appropriate local health entity of a potential exposure to a reportable disease;

(4) act as a liaison between the agency's emergency response employees, contractors, or volunteers who may have been exposed to a reportable disease during the course and scope of employment or service as a volunteer and the designated hospital of the client who was the source of the potential exposure;

(5) investigate and evaluate an exposure incident, using current evidence-based information on the possible risks of communicable disease presented by the exposure incident; and

(6) monitor all follow-up treatment provided to the affected emergency response employee or volunteer, in accordance with applicable federal, state, and local law.

§558.287. Quality Assessment and Performance Improvement.

(a) Quality Assessment and Performance Improvement (QAPI) Program.

(1) An agency must maintain a QAPI Program that is implemented by a QAPI Committee. The QAPI Program must be ongoing, focused on client outcomes that are measurable, and have a written plan of implementation. The QAPI Committee must review and update or revise the plan of implementation at least once within a calendar year, or more often if needed. The QAPI Program must include:

(A) a system for measuring and documenting [~~that measures~~] significant outcomes for optimal care. The QAPI Committee must use the measures in the care planning and coordination of services and events. The measures must include the following as appropriate for the scope of services provided by the agency:

(i) an analysis of a representative sample of services furnished to clients contained in both active and closed records;

(ii) a review of:

(I) negative client care outcomes;

(II) complaints and incidents of unprofessional conduct by licensed staff and misconduct by unlicensed staff;

(III) infection control activities;

(IV) medication administration and errors; and

(V) effectiveness and safety of all services provided, including:

(-a-) the competency of the agency's clinical staff;

(-b-) the promptness of service delivery; and

(-c-) the appropriateness of the agency's responses to client complaints and incidents;

(iii) a determination that services have been performed as outlined in the individualized service plan, care plan, or plan of care; and

(iv) an analysis of client complaint and satisfaction survey data; and

(B) an annual evaluation of the total operation, including services provided under contract or arrangement.

(i) An agency must use the QAPI annual evaluation to correct identified problems and, if necessary, to revise policies.

(ii) An agency must document corrective action to ensure that improvements are sustained over time.

(2) An agency must immediately correct identified problems that directly or potentially threaten the client care and safety.

(3) QAPI documents must be kept confidential and be made available to HHSC staff upon request.

(b) QAPI Committee membership. At a minimum, the QAPI Committee must consist of:

(1) the administrator;

(2) the supervising nurse or therapist, or the supervisor of an agency licensed to provide personal assistance services; [~~and~~]

(3) an individual representing the inpatient unit, as applicable; and

(4) [~~(3)~~] an individual representing the scope of services provided by the agency, that may include home health and hospice aides and attendants.

(c) Frequency of QAPI Committee meeting. At a minimum, the [~~The~~] QAPI Committee must: [~~meet twice a year or more often if needed.~~]

(1) meet with enough frequency to conduct required QAPI activities but not less than twice a year;

(2) meet in-person or virtually; and

(3) document the date of meeting with individuals in attendance and the individuals' signatures.

§558.288. Coordination of Services.

(a) An agency must adopt and enforce a written policy regarding coordination of services to ensure the effective exchange of information, reporting, and coordination of client services among:

(1) all agency personnel providing care and services, whether the care and services are provided directly or under arrangement;

(2) the agency and other providers of healthcare [~~health care~~] services involved in the care of a client, if known by the agency; [~~and~~]

(3) the agency and a licensed facility, group home, foster home, or boarding home facility in which a client resides; and[~~.~~]

(4) the agency and all providers of teleservices.

(b) The agency must include documentation in the client record of coordination of services as specified in subsection (a) of this section.

(c) If the agency provides temporary services for a client who has traveled outside the agency's service area, the agency must adopt and enforce a written policy regarding the coordination of service delivery.

(d) [~~(c)~~] In this section, other providers of healthcare [~~health care~~] services involved in the care of a client may include:

(1) a physician;

(2) another agency;

(3) a day activity and health services facility [~~an adult day care center~~];

(4) an outpatient facility; and

(5) a managed care organization.

§558.289. Independent Contractors and Arranged Services.

(a) Independent contractors. If an agency uses independent contractors, there must be a contract between each independent contractor that performs services and the agency. The contract must be enforced by the agency and clearly designate:

(1) that clients are accepted for care only by the agency;

(2) the services the contractor provides and how the services are provided, such as by visit or by hour; [~~the services to be provided by the contractor and how they will be provided (i.e. per visit, per hours, etc.);~~]

(3) the necessity of the contractor to conform to all applicable agency policies, including personnel qualifications;

(4) the contractor's responsibility for participating in developing the plan of care, care plan, or individualized service plan;

(5) the way services are [~~will be~~] coordinated and evaluated by the agency in accordance with §558.288 of this division (relating to Coordination of Services);

(6) the procedures for:

(A) submitting information and documentation by the contractor, in accordance with the agency's client record policies;

(B) scheduling of visits by the contractor or the agency;

(C) periodically evaluating the client [~~periodic client evaluation~~] by the contractor; and

(D) determining charges and reimbursement payable by the agency for the contractor's services under the contract.

(b) Arranged services. Home health services, hospice services, or personal assistance services provided by an agency under arrangement with another agency or organization must be provided under a written contract conforming to the requirements specified in subsection (a) of this section.

(c) If an agency contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement, the agency must ensure that either the agency [~~it~~] or the contracting agency or organization:

(1) searches the medication aide registry (MAR) and the nurse aide registry (NAR) [~~and the employee misconduct registry (EMR)~~] before the unlicensed person's first direct [~~face-to-face~~] contact with a client of the agency[~~, using the HHSC Internet website~~] to confirm that the unlicensed person is not listed in either registry as unemployable; and

[~~(2) provides written information to the unlicensed person about the EMR that complies with the requirements of 40 TAC §93.3(c) (relating to Employment and Registry Information); and~~]

(2) [~~(3)~~] searches the MAR, if applicable, and the NAR [~~and the EMR~~] at least every 12 months [~~using the HHSC Internet website~~] to confirm that the person is not listed in either registry as unemployable.

(d) If an agency contracts with another agency or organization for a licensed person to provide licensed home health services, hospice services, or personal assistance services under arrangement, the agency must ensure that either the agency or the contracting agency or organization:

(1) searches the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 before the person's direct contact with a client of the agency to confirm that the person is not listed in SEMARC as unemployable;

(2) provides written information to the person about the SEMARC that complies with the requirements of §561.3(c) of this title (relating to Employment and Registry Information); and

(3) searches the SEMARC at least every 12 months to confirm the person is not listed in the SEMARC as unemployable.

(e) [~~(d)~~] If an agency contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement, the agency must ensure that the contracting agency or organization:

(1) conducts a criminal history check before the unlicensed person's first direct [~~face-to-face~~] contact with a client of the agency; and

(2) verifies that the unlicensed person's criminal history information does not include a conviction that bars employment under Texas Health and Safety Code §250.006.

(f) [~~(e)~~] Documentation for contract staff.

(1) An agency is not required to maintain a personnel record for independent contractors or staff who provide services under arrangement with another agency or organization.

(2) Upon request by HHSC, an agency must provide documentation at the site of a survey within eight working hours of the request to demonstrate that:

(A) [~~(1)~~] independent contractors or staff under arrangement meet the agency's written job qualifications for the position and duties performed;

(B) [~~(2)~~] the agency ensures compliance with subsection (c) of this section for unlicensed staff and subsection (d) of this section for licensed staff providing services to the agency's clients under arrangement; and

(C) [~~(3)~~] the agency complies with subsection (e) [~~(d)~~] of this section for unlicensed staff providing services to the agency's clients under arrangement by providing a written statement, signed by a person authorized to make decisions on personnel matters for the contracting agency or organization, attesting that a criminal history check was conducted before an unlicensed person's first direct [~~face-to-face~~] contact with a client, and did not include a conviction barring employment under Texas Health and Safety Code §250.006.

§558.290. Backup Services and After-Hours Care.

(a) For the purposes of this section, a client's designee is the individual that the client or the LAR, as applicable, determines can provide services when the agency is unable to provide an employee, volunteer, or contractor.

(b) [~~(a) Backup services.~~] An agency must adopt and enforce a written policy to ensure that backup services are available when an agency employee or contractor is not available to deliver the services.

(1) An agency's policy must describe its process to activate backup services.

(2) An agency must document each attempt to provide backup services in the client's file.

(3) [~~(1)~~] Backup services may be provided by an agency employee, a contractor, or the client's designee who is willing and able to provide the necessary services.

(4) When backup services are provided by an agency employee or a contractor, the agency must ensure that:

(A) an agency employee meets the qualifications required to provide the necessary services;

(B) a contractor meets the requirements in §558.289 of this division (relating to Independent Contractors and Arranged Services); and

(C) services are provided according to the client's care plan, plan of care, or individualized service plan.

(5) [~~(2)~~] If the client's designee has agreed to provide backup services required by this section, the agency must ensure [~~have~~] the designee:

(A) receives instruction and demonstrates competency to provide the necessary services; and

(B) signs [~~sign~~] a written agreement to be the backup service provider. The agency must keep the agreement in the client's file.

(6) [~~(3)~~] An agency must not coerce a client to accept backup services.

(c) An agency must offer backup services when a visit cannot be rescheduled within a time period that meets the service requirements specified in the plan of care or individual service plan.

(d) [~~(b) After-hours care.~~] An agency must adopt and enforce a written policy to ensure that clients are educated in how to access after-hours care from the agency or backup or emergency services from another healthcare [~~health care~~] provider after the agency's operating [~~regular business~~] hours.

§558.291. Agency Dissolution.

An agency must adopt and enforce a written policy that describes the agency's written contingency plan.

(1) The plan must be implemented in the event of dissolution to assure continuity of client care.

(2) The plan must:

(A) be consistent with §558.295 of this division (relating to Client Transfer or Discharge Notification Requirements);

(B) include procedures for:

(i) notifying the client of the agency's dissolution;

(ii) documenting the notification;

(iii) carrying out the notification; and

(C) comply with §558.217 [~~§558.217(a)(2)~~] of this subchapter (relating to Agency Closure Procedures and Voluntary Suspension of Operations).

§558.292. Agency and Client Agreement and Disclosure.

(a) The agency must provide the client and [~~or~~] the LAR, as applicable, [~~client's family~~] with a written agreement for services. The agency must comply with the terms of the agreement. The agreement must include at a minimum the following:

(1) notification of client rights and responsibilities;

(2) documentation showing that [~~concerning~~] notification was provided to the client about [~~of~~] the availability of medical power of attorney for health care, advance directive or "Do Not Resuscitate" orders as required by [~~in accordance with~~] the Texas Health and Safety Code Chapter 166 [~~applicable law~~];

(3) services the agency provides [~~to be provided~~];

(4) supervision by the agency of services provided;

(5) agency charges for services rendered if the charges are [~~will be~~] paid in full or in part by the client or the client's family, or on request;

(6) a written statement containing procedures for filing a complaint in accordance with §558.282(d)(2) [~~§558.282(d)~~] of this division (relating to Client Conduct and Responsibility and Client Rights); and

(7) a client agreement to and acknowledgement of services by home health medication aides, if home health medication aides are used.

(b) The agency must obtain an acknowledgment of receipt from the client and the LAR, as applicable, [~~or his family~~] of the items listed under subsection (a) of this section. This acknowledgment of receipt must be kept in the client's record.

§558.295. Client Transfer or Discharge Notification Requirements.

(a) Except as provided in subsection (f) [~~(e)~~] of this section, an agency intending to transfer or discharge a client must:

(1) provide written notification to the client or the client's parent, family, spouse, significant other, or LAR [~~legal representative~~]; and

(2) notify the client's primary care [~~attending~~] physician [~~or practitioner~~] if the primary care physician [~~he~~] is involved in the agency's care of the client.

(b) An agency must ensure delivery of the written notification no later than five days before the date on which the client will be transferred or discharged.

(c) The agency must deliver the required written notification [~~notice~~] by hand, [~~or by~~] mail, or electronic correspondence.

(d) If the agency delivers the written notice by electronic correspondence:

(1) the client or the LAR must have agreed in writing to allow the agency to provide the notifications electronically; and

(2) the electronic correspondence must comply with Health Insurance Portability and Accountability Act requirements and be provided securely, such as through encrypted electronic mail.

(e) [~~(d)~~] If the agency delivers the written notice by mail:

(1) the notice must be mailed at least eight working days before the date of transfer or discharge; and

(2) the agency must speak with the client by telephone or in person to ensure the client's knowledge of the transfer or discharge, at least five days before the date of transfer or discharge.

(f) [~~(e)~~] An agency may transfer or discharge a client without prior notice required by subsection (b) of this section:

(1) upon the client's request;

(2) if the client's medical needs require transfer, such as a medical emergency;

(3) in the event of a disaster when the client's health and safety is at risk, in accordance with provisions of §558.256 of this subchapter (relating to Emergency Preparedness Planning and Implementation);

(4) for the protection of staff or a client after the agency has made a documented reasonable effort to notify the client, the client's family and physician, and appropriate state or local authorities, of the agency's concerns for staff or client safety, and in accordance with agency policy;

(5) according to practitioner [~~physician~~] orders; or

(6) if the client fails to pay for services, except as prohibited by federal law.

(g) [~~(f)~~] An agency must keep the following in the client's file:

(1) a copy of the written notification provided to the client or the LAR, as applicable [~~client's parent, family, spouse, significant other, or legal representative~~];

(2) documentation of the personal contact with the client, if the required notice was delivered by mail; and

(3) documentation that the client's primary care [~~attending~~] physician [~~or practitioner~~] was notified of the date of discharge.

§558.297. Receipt of Practitioner [~~Physician~~] Orders.

An agency must adopt and enforce a written policy describing protocols and procedures agency staff must follow when receiving practitioner [~~physician~~] orders.

(1) The policy must address the time frame for countersignature of practitioner [~~physician~~] verbal orders.

(2) Signed practitioner [~~physician~~] orders may be submitted via fax machine or secure electronic transmission. The agency is not required to have the original signatures on file. However, the agency must be able to obtain original signatures if an issue surfaces that would require verification of an original signature.

(3) The policy must include protocols to follow when accepting practitioner [~~physician~~] orders via fax or secure electronic transmission. If practitioner [~~physician~~] orders are accepted by [~~via~~] fax or secure electronic transmission, the policy must:

(A) outline safeguards to ensure [~~assure~~] that transmitted information is sent to the appropriate individual; and

(B) outline the procedures to be followed in the case of misdirected transmission.

§558.304. Standards for Electronic Record Maintenance and Storage.

(a) In addition to requirements for client records in §558.301 of this division (relating to Client Records), requirements for agency dissolution at §558.217 of this subchapter (relating to Agency Closure Procedures and Voluntary Suspension of Operations), and §558.291 of this division (relating to Agency Dissolution), the agency must ensure compliance with this section.

(b) If an agency chooses to maintain records electronically, the agency must:

(1) maintain and store records in accordance with professional standards of practice;

(2) establish and maintain a centralized record system to ensure complete and accurate documentation, readily accessible, and systematically organized to facilitate the compilation and retrieval of information;

(3) ensure all electronic records are safeguarded to protect against loss or damage through the use of backup services;

(4) ensure each electronic record is treated confidentially and safeguarded against unofficial use;

(5) ensure all electronic records, including electronic clinical records related to services provided by telehealth or telephone monitoring, meet all the requirements of paper records, including:

(A) each electronic record is current, accurate, signed, and dated with the date of entry by the individual making the entry; and

(B) all electronic record entries are not altered without evidence and explanation of such alteration; corrections must be made by striking through the error with a single line and include the date the correction was made and the initials of the person making the correction;

(6) establish an electronic records storage area at the agency's place of business that must:

(A) maintain the original active electronic record; and

(B) allow access to the original active electronic record by the ADS and branch office;

(7) not use a copy of the active electronic record in place of the original electronic record; and

(8) establish a system or arrangement for the preservation of inactive electronic records by:

(A) preserving inactive electronic records on a hard drive, a backup cloud storage service, or other electronic means, and storing at the parent agency location with access from the branch office or ADS; security must be maintained and the electronic record must be readily retrievable by the agency;

(B) retaining original electronic records for a minimum of five years after the discharge of the client; and

(C) retaining electronic records that relate to any matter that is involved in litigation if the agency knows the litigation has not been finally resolved.

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

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DIVISION 5. BRANCH OFFICES, [~~AND~~] ALTERNATE DELIVERY SITES, AND ADMINISTRATIVE SUPPORT SITES

26 TAC §§558.321 - 558.323

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments and new section affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.321. Standards for Branch Offices.

(a) A branch office operates as a part of the parent agency and must comply with the same regulations as the parent agency. The parent agency is responsible for ensuring that its branches comply with licensing standards.

(b) A branch office providing licensed and certified home health services must comply with the standards for certified agencies in §558.402 of this chapter (relating to Standards Specific to Licensed and Certified Home Health Services).

(c) The service area of a branch office must be located within the parent agency's service area.

(1) A branch office must not provide services outside its licensed service area.

(2) A branch office must maintain adequate staff to provide services and to supervise the provision of services within the service area.

(3) A branch office may expand its service area at any time during the licensure period.

(A) Unless exempted under subparagraph (B) of this [~~the~~] paragraph, a branch office must submit to HHSC a written notice to expand its service area by submitting an application through the online portal at least 30 days before the expansion. The notice must include:

(i) revised boundaries of the branch office's original service area;

(ii) the effective date of the expansion; and

(iii) an updated list of management and supervisory personnel (including names), if changes are made.

(B) An agency is exempt from the 30-day written notice requirement under subparagraph (A) of this paragraph if HHSC determines an emergency exists that would impact client health and safety. An agency must notify HHSC immediately of a possible emergency. HHSC determines if an exemption can be granted.

(4) A branch office may reduce its service area at any time during the licensure period by sending HHSC [~~written~~] notification of the reduced [~~reduction~~], revised boundaries of the branch office's original service area by submitting an application through the online portal[~~, and~~] the effective date of the reduction.

(d) A parent agency and a branch office providing home health or personal assistance services must meet the following requirements.[~~:~~]

(1) The parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse, must conduct a [~~an on-site~~] supervisory visit to the branch office [~~at least~~] monthly. The parent agency may visit the branch office more frequently considering the size of the service area and the scope of services provided by the parent agency. [~~The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.~~]

(A) The supervisory visits may be conducted virtually, but at least one on-site supervisory visit must occur every quarter. The parent agency may perform on-site visits to the branch office more frequently, if needed.

(B) The supervisory visits must be documented. The documentation must include the date of the visit, the content discussed during the consultation, the names of all individuals present, and any recommendations made by staff.

(2) The original active branch clinical record must be kept at the branch office.

(3) The parent agency must approve all branch office policies and procedures. This approval must be documented and filed in the parent and branch offices. All electronic records must be maintained in accordance with §558.304 of this subchapter (relating to Standards for Electronic Record Maintenance and Storage).

(4) Agency policy and procedures must readily be accessible to both the parent agency and the branch office.

(e) HHSC issues or renews a branch office license for applicants who meet the requirements of this section.

(1) Issuance or renewal of a branch office license is contingent upon compliance with the statute [~~Statute~~] and this chapter by the parent agency and branch office.

(2) HHSC may take enforcement action against a parent agency license for a branch office's failure to comply with the statute [~~Statute~~] or this chapter in accordance with Subchapter F of this chapter (relating to Enforcement).

(3) Revocation, suspension, denial, or surrender of a parent agency license will result in the same revocation, suspension, denial, or surrender of a branch office license for all branch office licenses of the parent agency.

(f) A branch office may offer fewer health services or categories than the parent office but may not offer health services or categories that are not also offered by the parent agency.

§558.322. Standards for Alternate Delivery Sites.

(a) An ADS must comply with the statute [~~Statute~~] and this chapter, including the additional standards in Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services).

(b) If certified by CMS, an ADS must comply with the applicable federal rules and regulations for hospice agencies in 42 CFR Part 418.

(c) A parent agency and an ADS must meet the following requirements.[~~:~~]

(1) The parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse, must conduct an on-site supervisory visit to the ADS at least monthly. The parent agency may visit the ADS more frequently considering the size of the service area provided by the parent agency. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) The parent agency must approve all ADS policies and procedures. This approval must be documented and filed in the parent agency and ADS. All electronic records must be maintained in accordance with §558.304 of this subchapter (relating to Standards for Electronic Record Maintenance and Storage).

(d) Issuance or renewal of an ADS license is contingent upon compliance by the parent agency and ADS with the statute [~~Statute~~] and this chapter.

(1) HHSC may take enforcement action against a parent agency license for the [~~an ADS'~~] failure of an ADS to comply with the

statute [~~Statute~~] or this chapter in accordance with Subchapter F of this chapter (relating to Enforcement).

(2) Revocation, suspension, denial or surrender of a parent agency license results in the same revocation, suspension, denial or surrender of all ADS licenses of the parent agency.

§558.323. Standards for Administrative Support Sites.

(a) An administrative support site operates as a part of the parent agency. The parent agency is responsible for ensuring that its administrative support site complies with licensing standards.

(b) An administrative support site does not provide home health, hospice, or personal assistance services, and therefore does not require a license or a fee.

(c) An agency is operating a branch or alternate delivery site if it delivers any home health, hospice, or personal assistance services from the location of the administrative support site.

(d) An administrative support site may be used for the following administrative office and support functions:

(1) in-service training;

(2) human resource functions;

(3) drop-off and pick-up of documentation, time slips, or paychecks;

(4) record storage functions for inactive records; and

(5) administrative office functions that may or may not involve activities otherwise listed in subsection (e) of this section.

(e) Administrative office functions in an administrative support site do not include client-centered activities including:

(1) contacting clients or conducting scheduling activities;

(2) accepting referrals or lab results;

(3) coordinating client care;

(4) storing active client records;

(5) drafting or entering notes for client care; or

(6) providing teleservices.

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DIVISION 6. TELEHEALTH, TELEMEDICINE, TELEMONITORING, AND TELECOMMUNICATION

26 TAC §§558.330, 558.332, 558.334, 558.336, 558.338

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The new sections affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.330. Applicability.

(a) In order to provide teleservices, an agency must be licensed in the home health, licensed and certified home health, or hospice category of service.

(b) An agency licensed to provide only personal assistance services must not provide telehealth, telemedicine, or telemonitoring for clients.

(c) Teleservices may be used to:

(1) monitor client conditions;

(2) prevent unnecessary hospitalizations;

(3) reduce unscheduled nurse visits;

(4) allow earlier identification of changes in condition;

(5) ensure service delivery;

(6) increase client and caregiver satisfaction with care; and

(7) ease the transition of the client to self-care.

(d) Agencies that provide teleservices must identify the extent to which those services will be used for clients in the admission agreement and under what, if any, circumstances in-person services will be provided.

§558.332. General Standards for Teleservices.

(a) An agency must evaluate the client, family supports, and environment to determine whether teleservices are appropriate to meet the client's needs and goals of care as ordered by a practitioner when applicable. The evaluation must consider:

(1) the ability of the client to participate in the delivery of services;

(2) the availability of client support to participate in the delivery of the services;

(3) the availability of electronic devices in formats that are compatible with the provision of teleservices; and

(4) whether the environment maintains confidentiality and dignity during the teleservice visit.

(b) Prior to admitting a client or developing a plan of care or care plan to deliver services using teleservices, the agency must ensure that the client lives within the agency's service area in accordance with §558.220 of this subchapter (relating to Service Areas).

(c) An agency conducting an initial assessment, comprehensive assessment, or reassessment virtually must ensure that all aspects of the assessment can be accurately and completely evaluated using the

agency's chosen teleservice delivery model and documented as part of the client's clinical record.

(d) An agency that identifies a risk to the client's health or safety in the client's environment during an assessment or visit using teleservices must complete an in-home visit to determine the extent of the risk and any impact the risk may pose to the provision of services.

(e) An agency must ensure employees and contractors who provide teleservices are licensed or authorized to provide services in Texas and meet all conditions for employment or contracting in accordance with §558.245 of this subchapter (relating to Staffing Policies).

(f) Teleservices must be conducted in a language and manner the client can understand. If needed by the client or LAR, the agency must locate and coordinate the use of an interpreter or translator to ensure communication is effective.

(g) An agency must ensure all teleservices are provided in a secure and confidential manner.

(h) An agency must obtain and maintain written consent from the client or LAR for any teleservices provided by the agency in accordance with a plan of care or care plan.

(1) An agency must not require a client to accept delivery of services in part or in total using teleservices if the client's preferred service delivery method is in-person and in-person services are available.

(2) An agency must educate the client and family on the availability, functionality, and limitations of teleservices.

(3) A client may designate an individual to assist with the use of teleservices as needed.

(i) An agency must evaluate its teleservices program as part of its quality assessment and performance activities.

(j) If the agency determines the client's needs, goals of care, and purposes of the visits are not being met using teleservices, the agency must reevaluate to determine if teleservices continue to be appropriate for the client.

(k) An agency must adopt and enforce policies and procedures related to the use of teleservices, including:

(1) documentation for teleservice visits;

(2) training for the use of teleservice delivery models utilized by the agency;

(3) maintaining confidentiality and Health Insurance Portability and Accountability compliance;

(4) procedures for conducting visits or assessments via teleservices;

(5) procedures for addressing interruptions in service during the use of teleservices, such as technological malfunction; and

(6) procedures for electronic correspondence, including confirming receipt of electronically transmitted information with the client or LAR as applicable.

(l) Agency staff and contractors must be trained on the agency's policy and procedures for teleservices at least annually or upon any change to the policy.

(m) An agency that becomes unable to meet the client's needs through the use of teleservices, either due to the availability of service delivery options or the ineffectiveness of the available services options, must document its concerns and follow the transfer and discharge requirements in §558.295 of this subchapter (relating to Client Transfer or Discharge Notification Requirements) as applicable.

§558.334. Standards for Telehealth and Telemedicine.

(a) Agency staff or contractors with a current license, certification, or specialty permitted to utilize telehealth or telemedicine services must follow all applicable state and federal requirements regarding the provision of these services, including as dictated by the applicable licensing boards, Texas Occupations Code, and TAC.

(b) Agency staff or contractors providing telemedicine medical services or telehealth services must maintain the confidentiality of protected health information as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, Texas Occupations Code Chapters 111 and 159, and other applicable federal and state law.

§558.336. Standards for Telemonitoring.

(a) A client's primary care physician must order telemonitoring and include:

(1) the condition to be telemonitored;

(2) how often the telemonitoring will occur;

(3) any applicable parameters; and

(4) any additional instructions required as part of the telemonitoring, including physician notifications.

(b) The agency must adopt and enforce a policy for delivery, installation, maintenance, and monitoring of the telemonitoring equipment.

(c) If an agency uses contractor services to provide delivery, installation, maintenance, and monitoring of the equipment, then use of contractor services must be in accordance with §558.247 of this subchapter (relating to Verification of Employability and Use of Unlicensed Persons as Employees, Volunteers, and Contractors) and §558.289 of this subchapter (relating to Independent Contractors and Arranged Services).

(d) An agency must provide education to the client, the client's LAR, the client's family, and staff on the use of the specific home telemonitoring equipment applicable to the client.

(e) An agency must ensure that an RN reviews any transmitted clinical data at intervals consistent with the client's needs and the primary care physician's goals.

(f) An agency may use LVNs to assist an RN in providing nursing telemonitoring services to the extent allowable by the Texas Board of Nursing.

(g) An agency must maintain documentation of telemonitoring visits and data, and the need for further evaluation of goals and outcomes, in the client's record in addition to the requirements in §558.301 of this subchapter (relating to Client Records).

§558.338. Standards for Telecommunications.

(a) Agency policies, procedures, contracting agreements, medical records, practitioner's orders, and arranged services agreements may be sent and received electronically in accordance with this division.

(b) An agency may choose to provide client admission, discharge, and required notifications in this division via telecommunications and electronic correspondence if the client or the LAR agrees and the notification method is effective to communicate the information.

(c) An agency that provides client admission, discharge, or required notifications via written telecommunication or electronic correspondence must confirm written receipt of the information with the client or the LAR.

(d) The agency must ensure security and confidentiality of all electronic correspondence and telecommunications via all platforms.

(e) If the agency chooses to use electronic correspondence or telecommunications, the information sent electronically must be encrypted or otherwise comply with Health Insurance Portability and Accountability requirements as described in the HIPAA Act of 1996. The agency must obtain:

(1) a written acknowledgment of electronic literacy and internet accessibility from the client or the LAR before sending policies electronically; and

(2) a written acknowledgment from the client or LAR of agreement to receive electronic correspondence. The acknowledgment must be kept in the client's record.

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SUBCHAPTER D. ADDITIONAL STANDARDS SPECIFIC TO LICENSE CATEGORY AND SPECIFIC TO SPECIAL SERVICES

26 TAC §§558.401, 558.404, 558.405

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.401. Standards Specific to Licensed Home Health Services.

(a) In addition to the standards in Subchapter C of this chapter (relating to Minimum Standards for All Home and Community Support Services Agencies), an agency providing licensed home health services must also meet the standards of this section.

(b) The agency's admission of a client must be based on an initial health assessment, performed in the client's residence in-person or via teleservices by an appropriate healthcare professional, prior to any home health services being initiated, to ensure the agency can meet the [~~The agency must accept a client for home health services based on a reasonable expectation that the~~] client's medical, nursing, and social needs [~~can be met adequately in the client's residence~~].

(c) The [~~An~~] agency must reasonably expect [~~has made a reasonable expectation~~] that it can meet a client's needs if, at the time of the agency's admittance [~~acceptance~~] of the client, the client and the agency have agreed as to what needs the agency would meet; for instance, the agency and the client could agree that some needs would be met but not necessarily all needs.

(d) [~~(1)~~] The agency must start providing licensed home health services to a client based on the orders of the primary care physician or practitioner [~~within a reasonable time~~] after admittance [~~acceptance~~] of the client and according to the agency's policy. The initiation of licensed home health services must be based on the client's health service needs.

[~~(2) An initial health assessment must be performed in the client's residence by the appropriate health care professional prior to or at the time that licensed home health services are initially provided to the client. The assessment must determine whether the agency can provide the necessary services.~~]

(e) [~~(A)~~] The agency must ensure the appropriate healthcare professional prepares a care plan when a primary care physician or [~~If~~] a practitioner has not ordered skilled care for a client[~~, then the appropriate health care professional must prepare a care plan~~]. The care plan must be developed after consultation with the client, [~~and~~] the client's family, the LAR if applicable, and agency staff. The care plan [~~and~~] must include:

(1) the services to be provided by the agency; [~~rendered,~~]

(2) the goals of care;

(3) the frequency of visits or hours of service to be provided by the agency;[~~,~~]

(4) the supplies and equipment to be provided by the agency;

(5) the identified problems;[~~,~~]

(6) the methods [~~method~~] of intervention;[~~,~~] and

(7) the projected date of resolution. [~~The care plan must be reviewed and updated by all appropriate staff members involved in client care at least annually, or more often as necessary to meet the needs of the client.~~]

(f) [~~(B)~~] The agency must ensure the appropriate healthcare professional prepares a plan of care when [~~If~~] a primary care physician or practitioner orders skilled care and services [~~treatment, then the appropriate health care professional must prepare a plan of care~~].

(1) The primary care physician or practitioner must sign and approve the plan of care within 60 days after the date of the initial assessment [~~The plan of care must be signed and approved by a practitioner in a timely manner~~].

(2) The primary care physician or practitioner must work together with the client, the client's family, the LAR if applicable, and agency staff to develop the plan of care. The plan of care must list all important diagnoses and include the following information about the client: [~~The plan of care must be developed in conjunction with agency staff and must cover all pertinent diagnoses, including~~]

(A) mental status;[,]

(B) types of services and equipment required;[,]

(C) frequency of visits at the time of admission;[,]

(D) prognoses;[,]

(E) functional limitations;[,]

(F) activities permitted;[,]

(G) nutritional requirements;[,]

(H) medications and treatments;[,]

(I) any safety measures to protect against injury;[,]

(J) goals of care; and

(K) [and] any other appropriate items.

(3) The appropriate healthcare [~~health care~~] personnel must perform services as specified in the plan of care. [~~The plan of care must be revised as necessary, but it must be reviewed and updated at least every six months.~~]

(g) [~~(e)~~] Agency staff must provide at least one home health service.

(h) The agency must ensure review and update of care plans and plans of care.

(1) The appropriate staff members involved in client care, including the physician if no skilled care is ordered, must review, update, and sign the care plan at least annually or more often as necessary to meet the needs of the client.

(2) A physician must review, update, and sign the plan of care at least every six months, or more often as necessary, if skilled care is ordered.

(i) [~~(d)~~] Licensed personnel must provide and supervise all services. The appropriate licensed healthcare professional must be available to supervise services as needed whenever services are provided. If medical social service is provided, the social worker must hold a license in the Texas to provide social work services. [~~All services must be provided and supervised by qualified personnel. The appropriate licensed health care professional must be available to supervise as needed, when services are provided. If medical social service is provided, the social worker must be licensed in the State of Texas to provide social work services.~~]

(j) [~~(e)~~] All staff providing services, delegation, and supervision must be employed by or be under contract with the agency.

(k) [~~(f)~~] An agency is not required to employ home health aides. If an agency employs home health aides or uses certified nurse aides to meet home health aide requirements, the agency must comply with §558.701 of this chapter (relating to Home Health Aides).

(l) [~~(g)~~] Unlicensed personnel employed by an agency to provide licensed home health services must:

(1) have demonstrated competency in the task assigned when competency cannot be determined through education and experience; [~~and~~]

(2) be at least 18 years of age or, if under 18 years of age, be a high school graduate or work as part of course completion while enrolled in a vocational education program; and[.]

(3) be supervised by an RN.

(m) An agency providing licensed home health services may use volunteers to add to the services provided by staff. An agency's use of volunteers must be in accordance with §558.248 of this chapter (relating to Volunteers).

§558.404. Standards Specific to Agencies Licensed to Provide Personal Assistance Services.

(a) In addition to meeting the standards in Subchapter C of this chapter (relating to Minimum Standards for All Home and Community Support Services Agencies), an agency holding a license with the category of personal assistance services must meet the standards of this section.

(b) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by using the words "personal assistance services" or in any other manner.

(c) Personal assistance services, as defined in §558.2 of this chapter (relating to Definitions), may be performed by an unlicensed person who is at least 18 years of age and has demonstrated competency, when competency cannot be determined through education and experience, to perform the tasks assigned by the supervisor. An unlicensed person who is under 18 years of age must be[, ~~is~~] a high school graduate or working as part of course completion while [~~is~~] enrolled in a vocational educational program[,] and must have [~~has~~] demonstrated competency to perform the tasks assigned by the supervisor in order to[, ~~may~~] perform personal assistance services.

(d) An agency providing personal assistance services must not provide nursing or skilled services to its clients.

(e) An RN must not perform nursing tasks identified by Texas Occupations Code §301.002 as part of the practice of professional nursing to personal assistance services clients under the agency's personal assistance services category of service.

(f) An agency providing personal assistance services must ensure nursing tasks are limited to the assessment of the client, delegation of tasks as described in subsection (i) of this section, and nursing supervision of unlicensed personnel in accordance with 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(g) An RN must determine and ensure all appropriate conditions exist as outlined by the Texas Board of Nursing and the memorandum of understanding between HHSC and the Texas Board of Nursing for an unlicensed person to perform tube feedings and medication administration through a permanently placed gastrostomy tube (g-tube).

(h) [~~(d)~~] The following tasks may be performed under the [~~a~~] personal assistance services category:

(1) personal care as defined in §558.2 of this chapter;

(2) health-related tasks provided by unlicensed personnel that an RN determines through an in-person assessment may be delegated [~~by an RN, or that an RN determines do not require delegation,~~] in accordance with the agency's written policy adopted, implemented, and enforced to ensure compliance with the rules adopted [~~by the Texas Board of Nursing~~] in 22 TAC Chapter 225 [~~(relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions)~~];

(3) health-related tasks that an RN determines through an in-person assessment do not require delegation, in accordance with the agency's written policy adopted, implemented, and enforced to ensure compliance with the rules adopted in 22 TAC Chapter 225; and

(4) [~~(3)~~] health-related tasks that are not the practice of professional nursing under the memorandum of understanding between HHSC and the Texas Board of Nursing.[~~; and~~]

[~~(4) health-related tasks that are delegated by a physician under the Texas Occupations Code Chapter 157.~~]

(i) If an RN determines through an assessment that a task can be delegated to unlicensed personnel, the agency providing personal assistance services must ensure:

(1) the RN complies with all the requirements for delegation under 22 TAC Chapter 225;

(2) unlicensed personnel are supervised by an RN who must be available in person or by telecommunications when the unlicensed person is performing the task;

(3) documentation of the competency of the unlicensed personnel to whom the nursing task is delegated, is verified by an RN or, if appropriate, by the unlicensed personnel's experience, training, education, or certification or permit;

(4) if the RN is employed by the agency, the agency has a written policy acknowledging that the final decision to delegate must be made by the RN in consultation with the client or the LAR; and

(5) the procedures for RN delegated medication administration are performed in accordance with §558.300 of this chapter (relating to Medication Administration).

(j) An agency providing personal assistance services may allow personal care staff to perform a health maintenance activity task under the following conditions.

(1) The activity must be performed for a client with a functional disability as defined in §558.2 of this chapter.

(2) The agency must ensure that the client, the LAR, or other adult chosen by the client, as applicable, is able and agrees in writing to direct an attendant to perform the task.

(3) An RN acting on behalf of the agency has conducted and documented an in-person assessment of the client's health status and all other relevant factors in accordance with 22 TAC §225.6 (relating to RN Assessment of a Client) and 22 TAC §225.8(a)(2) (relating to Health Maintenance Activities Not Requiring Delegation).

(A) The RN is not required to know the identity of the personal care staff member who will perform the activity or the specific qualifications of that personal care staff member.

(B) The RN is not required to determine the competency of the personal care staff who will perform the activity.

(4) The agency must maintain a copy of the RN assessment of a client for the use of health maintenance activities in the client's record.

(5) Health maintenance activities may only be provided to a client with stable and predictable conditions as required by 22 TAC §225.8.

(6) The RN must reassess a client's status in accordance with this subsection any time there is a change in the client's condition that may affect the client's physical or cognitive abilities, or the stability or predictability of the client's condition and, at a minimum, must reassess the client's status at least once annually.

(k) [~~(e)~~] The agency must ensure that when developing its operational policies, the policies are considerate of principles of individual and family choice and control, functional need, and accessible and flexible services.

(l) An agency providing personal assistance services must ensure the identified services in the individualized service plan are provided by agency personnel, unless there is a need to engage back-up services in accordance with §558.290 of this chapter (relating to Backup Services and After-Hours Care).

(m) An agency providing personal assistance services that must engage back-up services must document the reason the services cannot be met by agency personnel.

(n) [~~(f)~~] In addition to the client record requirements in §558.301(a)(9) of this chapter (relating to Client Records), the client file must include the following:

(1) documentation of determination of services based on an on-site visit by the supervisor where services will be primarily delivered and records of supervisory visits, if applicable;

(2) individualized service plan developed, agreed upon, and signed by the client or family and the agency, that includes [~~The individualized service plan must include~~]:

(A) types of services, supplies, and equipment to be provided;

(B) locations of services;

(C) frequency and duration of services;

(D) planned date of service initiation;

(E) charges for services rendered if the charges will be paid in full or in part by the client or significant other [~~other(s)~~], or on request; and

(F) plan of supervision; and

(3) documentation that the services have been provided according to the individualized service plan.

(o) [~~(g)~~] In addition to the written policies required by §558.245 of this chapter (relating to Staffing Policies), the agency must adopt and enforce a written policy addressing the supervision of personnel with input from the client or family on the frequency of supervision.

(1) Supervision of personnel must be in accordance with the agency's policies and applicable state [~~State~~] laws and rules, including rules adopted by the Texas Board of Nursing in 22 TAC Chapter 225.

(2) A supervisor must be:

(A) a licensed nurse;

(B) an individual who has [~~or have~~] completed two years of full-time study at an accredited college or university; or[~~.~~]

(C) an [~~An~~] individual with a high school diploma or general equivalence diploma (GED), with each [~~may substitute one~~] year of full-time employment in a supervisory capacity in a healthcare [~~health care~~] facility, agency, or community-based agency substituting for each required year of college.

(3) The client in a client managed attendant care program funded by HHSC that allows the client to hire staff and supervise the client's own care [~~or the Department of Assistive and Rehabilitative Services~~] is not required to meet the standard in paragraph (2) of this subsection.

(p) [~~(h)~~] Tube feedings and medication administration through a permanently placed g-tube [~~gastrostomy tube (g-tube)~~] in accordance with subsection (g) [~~(d)(3)~~] of this section may be performed by an unlicensed person only after successful completion of the training and

competency program and procedures described in paragraphs (1) - (5) of this subsection.

(1) The training and competency program for the performance of g-tube feedings by an unlicensed person must be taught by an RN, a practitioner, [~~physician, physician assistant (PA),~~] or a qualified trainer. A qualified trainer must:

(A) have successfully completed the training and competency program described in paragraphs (2) and (3) of this subsection taught by an RN or practitioner [~~, physician, or PA~~];

(B) have demonstrated upon return demonstration to an RN, practitioner, [~~physician,~~] or PA the performance of the task and the ability to teach the task; and

(C) have been deemed competent by an RN, practitioner [~~physician~~], or PA, to train unlicensed personnel in these procedures. Documentation of competency to perform, train, and teach must be maintained in the employee's or contractor's file. Competency must be evaluated and documented annually by an RN, practitioner, [~~physician,~~] or PA.

(2) The minimum training program must include:

(A) a description of the g-tube placement, including its purpose;

(B) infection control procedures and universal precautions to be used when performing g-tube feedings or medication administration through a g-tube;

(C) a description of conditions that must be reported to the client or the primary caregiver, or in the absence of the primary caregiver, to the agency administrator, supervisor, or the client's practitioner, including [~~physician. The description of conditions must include~~] a plan to be effected if the g-tube comes out or is not positioned correctly to ensure medical attention is provided within one hour;

(D) review of a written procedure for g-tube feeding or medication administration through a g-tube that is[~~. The written procedure must be~~] equivalent to current acceptable nursing standards of practice, including addressing the crushing of medications;

(E) conditions under which g-tube feeding or medication administration must not be performed; and

(F) demonstration of a g-tube feeding and medication administration to a client; if[~~. If~~] the trainee becomes [~~will become~~] a qualified trainer, the demonstration must be done by the RN[~~, PA,~~] or practitioner [~~physician~~]. If the trainee does [~~will~~] not become a qualified trainer, the demonstration may be done by an RN, practitioner [~~PA, physician~~], or qualified trainer.

(3) The minimum competency evaluation must be documented and maintained in the employee's file and must include:

(A) a score of 100 percent on a written multiple-choice test that consists of situational questions to include the criteria in paragraph (2)(A) - (F) [~~(2)(A) - (E)~~] of this subsection and an evaluation of the trainee's judgment and understanding of the essential skills, risks, and possible complications of a g-tube feeding or medication administration through a g-tube;

(B) a skills checklist demonstrating that the trainee has successfully completed the necessary skills for a g-tube feeding and medication administration via g-tube, and if the trainee will become a qualified trainer, the skills checklist must also demonstrate the ability to teach another person to perform the task; the[~~. The~~] skills checklist must be completed by an RN, practitioner [~~physician~~], [~~or PA,~~] if the trainee will become a qualified trainer; the[~~. The~~] skills checklist for a trainee who will not become a qualified trainer may be completed by an RN, physician, [~~PA,~~] or qualified trainer; and

(C) documentation of an accurate demonstration of the g-tube feeding and medication administration performed by the trainee as required by paragraph (2)(F) of this subsection. If the trainee will become a qualified trainer, documentation of competency to teach this task must be maintained in the file of the qualified trainer. The person responsible for the training of the trainee must document the successful demonstration of the g-tube feeding and medication administration via g-tube by the trainee and the trainee's competency to perform this task in the trainee's file.

(4) The client or primary caregiver must provide information on the client's g-tube feeding or medication administration to the agency supervisor. If the client is not capable of directing his or her own care, the client's primary caregiver must be present to instruct and orient the supervisor regarding the client's g-tube feeding and medication regime. A copy of the current regime including unique conditions specific to the client must be placed in the client's file by the agency supervisor and provided to the respite caregiver. The respite caregiver must be oriented by the client, the client's primary caregiver, or the agency supervisor. The supervisor of the delivery of these services must have successfully completed a training and competency program outlined in paragraphs (2) and (3) of this subsection or be a qualified trainer.

(5) Legend medications that are to be administered must be in a legally labeled container from a pharmacy that contains the name of the client. Instructions for dosages according to weight or age for over-the-counter drugs commonly given the client must be furnished by the primary caregiver to the respite caregiver performing the tube feeding or medication administration.

§558.405. Standards Specific to Agencies Licensed to Provide Home Dialysis Services.

(a) License designation. An agency may not provide peritoneal dialysis or hemodialysis services in a client's residence, independent living environment, or other appropriate location unless the agency holds a license to provide licensed home health or licensed and certified home health services and designated to provide home dialysis services. In order to receive a home dialysis designation, the agency must meet the licensing standards specified in this section and the standards for home health services in accordance with Subchapter C of this chapter (relating to Minimum Standards for All Home and Community Support Services Agencies) and §558.401 of this subchapter (relating to Standards Specific to Licensed Home Health Services), except for §558.401(e) and (f) [~~§558.401(b)(2)(A) and (B)~~] of this subchapter. If there is a conflict between the standards specified in this section and those specified in Subchapter C of this chapter and §558.401 of this subchapter, the standards specified in this section will apply to the home dialysis services.

(b) Governing body. An agency must have a governing body. The governing body must appoint a medical director and the physicians who are on the agency's medical staff. The governing body must annually approve the medical staff policies and procedures. The governing body on a biannual basis must review and consider for approval continuing privileges of the agency's medical staff. The minutes from the governing body of the agency must be on file in the agency office.

(c) Qualifications and responsibilities of the medical director.

(1) Qualifications. The medical director must be a physician licensed in the State of Texas who:

(A) is eligible for certification or is certified in nephrology or pediatric nephrology by a professional board; or

(B) during the five-year period prior to September 1, 1996, served at least 12 months as director of a dialysis facility or program.

(2) Responsibilities. The medical director must:

(A) participate in the selection of a suitable treatment modality for all clients;

(B) ensure [~~assure~~] adequate training of nurses in dialysis techniques;

(C) ensure [~~assure~~] adequate monitoring of the client and the dialysis process; and

(D) ensure [~~assure~~] the development and availability of a client care policy and procedures manual and its implementation.

(d) Personnel files. An agency must have individual personnel files on all physicians, including the medical director. The file must include the following:

(1) a curriculum vitae which documents undergraduate, medical school, and all pertinent post graduate training; and

(2) evidence of current licensure, and evidence of current United States Drug Enforcement Administration certification, Texas Department of Public Safety registration, and the board eligibility or certification, or the experience or training described in subsection (c)(1) of this section.

(e) Provision of services. An agency that provides home staff-assisted dialysis must, at a minimum, provide nursing services, nutritional counseling, and medical social service. These services must be provided as necessary and as appropriate at the client's home, by telephone, or by a client's visit to a licensed ESRD facility in accordance with this subsection. The use of dialysis technicians in home dialysis is prohibited.

(1) Nursing services.

(A) An RN, licensed by the State of Texas, who has at least 18 months experience in hemodialysis obtained within the last 24 months and has successfully completed the orientation and skills education described in subsection (f) of this section, must be available whenever dialysis treatments are in progress in a client's home. The agency administrator must designate a qualified alternate to this RN.

(B) Dialysis services must be supervised by an RN who meets the qualifications for a supervising nurse as set out in §558.244(c)(2) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications).

(C) Dialysis services must be provided by a qualified licensed nurse who:

(i) is licensed as an RN or LVN by the State of Texas;

(ii) has at least 18 months experience in hemodialysis obtained within the last 24 months; and

(iii) has successfully completed the orientation and skills education described in subsection (f) of this section.

(2) Nutritional counseling. A dietitian who meets the qualifications of this paragraph must be employed by or under contract with the agency to provide services. A qualified dietitian must meet the definition of dietitian in §558.2 of this chapter (relating to Definitions) and have at least one year of experience in clinical nutrition after obtaining eligibility for registration by the American Dietetic Association, Commission on Dietetic Registration.

(3) Medical social services. A social worker who meets the qualifications established in this paragraph must be employed by or be under contract with the agency to provide services. A qualified social worker is a person who:

(A) is currently licensed under the laws of the State of Texas as a social worker and has a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has served for at least two years as a social worker, one year of which was in a dialysis facility or program prior to September 1, 1976, and has established a consultative relationship with a licensed master social worker.

(f) Orientation, skills education, and evaluation.

(1) All personnel providing dialysis in the home must receive orientation and skills education and demonstrate knowledge of the following:

(A) anatomy and physiology of the normal kidney;

(B) fluid, electrolyte, and acid-base balance;

(C) pathophysiology of renal disease;

(D) acceptable laboratory values for the client with renal disease;

(E) theoretical aspects of dialysis;

(F) vascular access and maintenance of blood flow;

(G) technical aspects of dialysis;

(H) peritoneal dialysis catheter, testing for peritoneal membrane equilibration, and peritoneal dialysis adequacy clearance, if applicable;

(I) the monitoring of clients during treatment, beginning with treatment initiation through termination;

(J) the recognition of dialysis complications, emergency conditions, and institution of the appropriate corrective action, including[~~. This includes~~] training agency personnel in emergency procedures and how to use emergency equipment;

(K) psychological, social, financial, and physical complications of chronic dialysis;

(L) care of the client with chronic renal failure;

(M) dietary modifications and medications for the uremic client;

(N) alternative forms of treatment for ESRD;

(O) the role of renal health team members (physician, nurse, social worker, and dietitian);

(P) performance of laboratory tests (hematocrit and blood glucose);

(Q) the theory of blood products and blood administration; and

(R) water treatment to include:

(i) standards for treatment of water used for dialysis as described in §3.2.1 (Hemodialysis Systems) and §3.2.2 (Maximum Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the Association for the Advancement of Medical Instrumentation (AAMI), 3330 Washington Boulevard, Suite 500, Arlington, Virginia 22201[~~. Copies of the standards are indexed and filed in the Texas Health and Human~~

Services Commission, 701 W. 51st Street, Austin, Texas 78751, and are available for public inspection during regular working hours];

(ii) systems and devices;

(iii) monitoring; and

(iv) risks to clients of unsafe water.

(2) The requirements for the orientation and skills education period for licensed nurses are as follows.

(A) The agency must develop an 80-hour written orientation program that includes classroom theory and direct observation of the licensed nurse performing procedures on a client in the home.

(i) The orientation program must be provided by an RN qualified under subsection (e)(1) of this section to supervise the provision of dialysis services by a licensed nurse.

(ii) The licensed nurse must pass a written skills examination or competency evaluation at the conclusion of the orientation program and prior to the time the licensed nurse delivers independent client care.

(B) The licensed nurse must complete the required classroom component as described in paragraph (1)(A) - (E), (K) - (O), (Q) and (R) of this subsection and satisfactorily demonstrate the skills described in paragraph (1)(F) - (J) and (P) of this subsection. The orientation program may be waived by successful completion of the written examination as described in subparagraph (A)(ii) of this paragraph.

(C) The supervising nurse or qualified designee must complete an orientation competency skills checklist for each licensed nurse to reflect the progression of learned skills, as described in paragraph (1) [subsection (f)(1)] of this subsection [section].

(D) Prior to the delivery of independent client care, the supervising nurse or qualified designee must directly supervise the licensed nurse for a minimum of three dialysis treatments and ensure satisfactory performance. Dependent upon the trainee's experience and accomplishments on the skills checklist, additional supervised dialysis treatments may be required.

(E) Continuing education for employees must be provided quarterly.

(F) Performance evaluations must be done annually.

(G) The supervising nurse or qualified designee must provide direct supervision to the licensed nurse providing dialysis services monthly, or more often if necessary. Direct supervision means that the supervising nurse is on the premises but not necessarily immediately present where dialysis services are being provided.

(g) Hospital transfer procedure. An agency must establish an effective procedure for the immediate transfer to a local Medicare-certified hospital for clients requiring emergency medical care. The agency must have a written transfer agreement with such a hospital, or all physician members of the agency's medical staff must have admitting privileges at such a hospital.

(h) Backup dialysis services. An agency that supplies home staff-assisted dialysis must have an agreement with a licensed ESRD facility to provide backup outpatient dialysis services.

(i) Coordination of medical and other information. An agency must provide for the exchange of medical and other information necessary or useful in the care and treatment of clients transferred between treating facilities. This provision must also include the transfer of the client care plan, hepatitis B status, and long-term program.

(j) Transplant recipient registry program. An agency must ensure that the names of clients awaiting cadaveric donor transplantation are entered in a recipient registry program.

(k) Testing for hepatitis B. An agency must conduct routine testing of home dialysis clients and agency employees to ensure detection of hepatitis B in employees and clients.

(1) An agency must offer hepatitis B vaccination to previously unvaccinated, susceptible new staff members in accordance with 29 CFR §1910.1030(f)(1) - (2) [(Bloodborne Pathogens)].

(A) Staff vaccination records must be maintained in each staff member's personnel file.

(B) New staff members providing home dialysis care must be screened for hepatitis B surface antigen (HBsAg) and the results reviewed prior to the staff providing client care, unless the new staff member provides the agency documentation of positive serologic response to hepatitis B vaccine.

(C) An agency must establish, implement, and enforce a policy for repeated serologic screening of staff. The repeated serologic screening must be based on each staff member's HBsAg/antibody to HBsAg (anti-HBs) and must be congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Disease in the United States, 1993, published by the United States Department of Health and Human Services (USDHHS).

(2) With the advice and consent of a client's nephrologist or primary care [attending] physician, an agency must make the hepatitis B vaccine available to a client who is susceptible to hepatitis B, provided that the client has coverage or is willing to pay for vaccination.

(A) An agency must make available to clients literature that explains [describing] the risks and benefits of the hepatitis B vaccination.

(B) Candidates for home dialysis must be screened for HBsAg within one month before or at the time of admission to the agency.

(C) Repeated serologic screening must be based on the antigen or antibody status of the client.

(D) Monthly screening for HBsAg is required for clients whose previous test results are negative for HBsAg.

(E) Screening for HBsAg-positive or anti-HBsAg-positive clients may be performed less often if the agency policy matches the most current survey of the National Surveillance of Dialysis Associated Diseases in the United States. [Screening of HbsAg-positive or anti-HbsAg-positive clients may be performed on a less frequent basis, provided that the agency's policy on this subject remains congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Diseases in the United States, 1993, published by the USDHHS.]

(l) CPR certification. All direct client care employees must have current CPR certification.

(m) Initial admission assessment. Assessment of the client's residence must be made to ensure a safe physical environment for the performance of dialysis. The initial admission assessment must be performed by a qualified RN who meets the qualifications under subsection (e)(1)(A) of this section.

(n) Client long-term program. The agency must develop a long-term program for each client admitted to home dialysis. Criteria must be defined in writing and must provide guidance to the agency in the selection of clients suitable for home staff-assisted dialysis and in noting changes in a client's condition that would require discharge

from the program. For the purposes of this subsection, Long-term program means the written documentation of the selection of a suitable treatment modality and dialysis setting, which has been selected by the client and the interdisciplinary team.

(o) Client history and physical. The agency must ensure that the history and physical is conducted upon the client's admission, or no more than six months prior to the date of admission, then annually after the date of admission.

(p) Practitioner's [~~Physician~~] orders. If home staff-assisted dialysis is selected, the practitioner [~~physician~~] must prepare orders outlining specifics of prescribed treatment.

(1) If these practitioner's [~~physician's~~] orders are received verbally, the orders [~~they~~] must be confirmed in writing within a reasonable time frame. An agency must adopt and enforce a policy on the time frame for the countersignature of a practitioner's [~~physician's~~] verbal orders. Medical orders for home staff-assisted dialysis must be revised as necessary but reviewed and updated at least every six months.

(2) The initial orders for home staff-assisted dialysis must be received prior to the first treatment and must cover all pertinent diagnoses, including mental status, prognosis, functional limitations, activities permitted, nutritional requirements, medications and treatments, and any safety measures to protect against injury. Orders for home staff-assisted dialysis must include frequency and length of treatment, target weight, type of dialyzer, dialysate, dialysate flow rate, heparin dosage, and blood flow rate, and must specify the level of preparation required for the caregiver, such as an LVN or RN.

(q) Client care plan. The client care plan must be developed after consultation with the client and the client's family by the interdisciplinary team. The interdisciplinary team must include the practitioner [~~physician~~], the RN, the dietitian, and the qualified social worker responsible for planning the care delivered to the home staff-assisted dialysis patient.

(1) The initial client care plan must be completed by the interdisciplinary team within 10 [~~calendar~~] days after the first home dialysis treatment.

(2) The client care plan must implement the medical orders and must include services to be rendered, such as the identification of problems, methods of intervention, and the assignment of healthcare [~~health care~~] personnel.

(3) The client care plan must be in writing, be personalized for the individual, and reflect the ongoing medical, psychological, social, nutritional, and functional needs of the client, including treatment goals.

(4) The client care plan must include written evidence of coordination with other service providers, such as dialysis facilities or transportation providers, as needed to assure the provision of safe care.

(5) The client care plan must include written evidence of the client's or client's legal representative's input and participation, unless the client or client's legal representative [~~they~~] refuse to participate. At a minimum, the client care plan must demonstrate that the content was shared with the client or the client's legal representative.

(6) For non-stabilized clients, where there is a change in modality, unacceptable laboratory work, uncontrolled weight changes, infections, or a change in family status, the client care plan must be reviewed at least monthly by the interdisciplinary team. Evidence of the review of the client care plan with the client and the interdisciplinary team to evaluate the client's progress or lack of progress toward the goals of the care plan, and interventions taken when progress toward stabilization or the goals are not achieved, must be documented and included in the client record.

(7) For a stable client, the client care plan must be reviewed and updated as indicated by any change in the client's medical, nutritional, or psychosocial condition or at least every six months. The long-term program must be revised as needed and reviewed annually. Evidence of the review of the client care plan with the client and the interdisciplinary team to evaluate the client's progress or lack of progress toward the goals of the care plan, and interventions taken when the goals are not achieved, must be documented and included in the client record.

(r) Medication administration. Medications must be administered only by licensed personnel.

(s) Client records. In addition to the applicable information described in §558.301(a)(9) of this chapter (relating to Client Records), records of home staff assisted dialysis clients must include the following:

(1) a medical history and physical;

(2) clinical progress notes by the practitioner [~~physician~~], qualified licensed nurse, qualified dietitian, and qualified social worker;

(3) dialysis treatment records;

(4) laboratory reports;

(5) a client care plan;

(6) a long-term program; and

(7) documentation of supervisory visits.

(t) Water treatment.

(1) Water used for dialysis purposes must be analyzed for chemical contaminants every six months. Additional chemical analysis must be conducted if test results exceed the maximum levels of chemical contaminants listed in §3.2.2 (Maximum Level of Chemical Contaminants) of the American National Standards for Hemodialysis Systems, March 1992 Edition, published by the AAMI. [~~Copies of the standards are indexed and filed in the Texas Health and Human Services Commission, 701 W. 51st Street, Austin, Texas 78751, and are available for public inspection during regular working hours.~~]

(2) Water used for dialysis must be treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques.

(3) Water used to prepare dialysate must meet the requirements set forth in §3.2.1 (Hemodialysis Systems) and §3.2.2 (Maximum Level of Chemical Contaminants), March 1992 Edition, published by the AAMI. [~~Copies of the standards are indexed and filed in the Texas Health and Human Services Commission 701 W. 51st Street, Austin, Texas 78751, and are available for public inspection during regular working hours.~~]

(4) Records of test results and equipment maintenance must be maintained at the agency.

(u) Equipment testing. An agency must adopt and enforce a policy to describe how the nurse will check the machine for conductivity, temperature, and pH prior to treatment, and describe the equipment required for these tests. The equipment must be available for use prior to each treatment. This policy must reflect current standards.

(v) Preventive maintenance for equipment. An agency must develop and enforce a written preventive maintenance program to ensure client care related equipment receives electrical safety inspections, if appropriate, and maintenance at least annually or more frequently if

recommended by the manufacturer. The preventive maintenance may be provided by agency or contract staff qualified by training or experience in the maintenance of dialysis equipment.

(1) All equipment used by a client in home dialysis must be maintained free of defects, which could be a potential hazard to clients, the client's family, or agency personnel.

(A) Agency staff must be able to identify malfunctioning equipment and report such equipment to the appropriate agency staff. Malfunctioning equipment must be immediately removed from use.

(B) Written evidence of all preventive maintenance and equipment repairs must be maintained.

(C) After repairs or alterations are made to any equipment, the equipment must be thoroughly tested for proper operation before returning to service.

(D) An agency must comply with the federal Food, Drug, and Cosmetic Act, 21 United States Code (U.S.C.) [~~(USC)~~] §360i(b), concerning reporting when a medical device, as defined in 21 U.S.C. [~~USC~~] §321(h), has or may have caused or contributed to the injury or death of an agency client.

(2) In the event that the water used for dialysis purposes or home dialysis equipment is found not to meet safe operating parameters, and corrections cannot be effected to ensure safe care promptly, the client must be transferred to a licensed hospital (if inpatient care is required) or licensed ESRD facility until such time as the water or equipment is found to be operating within safe parameters.

(w) Reuse or reprocessing of medical devices. Reuse or reprocessing of disposable medical devices, including but not limited to, dialyzers, end-caps, and blood lines must be in accordance with this subsection.

(1) An agency's reuse practice must comply with the American National Standard, Reuse of Hemodialyzers, 2003 [~~1993~~] Edition, published by the AAMI. An agency must adopt and enforce a policy for dialyzer reuse criteria (including any agency-set number of reuses allowed) which is included in client education materials.

(2) A transducer protector must be replaced when wetted during a dialysis treatment and must be used for one treatment only.

(3) Arterial lines may be reused only when the arterial lines are labeled to allow for reuse by the manufacturer and the manufacturer-established protocols for the specific line have been approved by the United States Food and Drug Administration.

(4) An agency must consider and address the health and safety of clients sensitive to disinfectant solution residuals.

(5) An agency must provide each client and the client's family or legal representative with information regarding the reuse practices of the agency, the opportunity to tour the reuse facility used by the agency, and the opportunity to have questions answered.

(6) An agency practicing reuse of dialyzers must:

(A) ensure that dialyzers are reprocessed via automated reprocessing equipment in a licensed ESRD facility or a centralized reprocessing facility;

(B) maintain responsibility and accountability for the entire reuse process;

(C) adopt and enforce policies to ensure that the transfer and transport of used and reprocessed dialyzers to and from the client's home does not increase contamination of the dialyzers, staff, or the environment; and

(D) ensure that HHSC staff has access to the reprocessing facility as part of an agency inspection.

(x) Laboratory services. Provision of laboratory services must be as follows.

(1) All laboratory services ordered for the client by a practitioner [~~physician~~] must be performed by a laboratory which meets the applicable requirements of 42 U.S.C. [~~United States Code (USC)~~] §263a, concerning certification and certificates of waiver of a clinical laboratory (CLIA 1988) and in accordance with a written arrangement or agreement with the agency. CLIA 1988 applies to all agencies with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Copies of all laboratory reports must be maintained in the client's medical record.

(3) Hematocrit and blood glucose tests may be performed at the client's home in accordance with §558.284 of this chapter (relating to Laboratory Services). Results of these tests must be recorded in the client's medical record and signed by the qualified licensed nurse providing the treatment. Maintenance, calibration, and quality control studies must be performed according to the equipment manufacturer's suggestions, and the results must be maintained at the agency.

(4) Blood and blood products must only be administered to dialysis clients in their homes by a licensed nurse or physician.

(y) Home dialysis supplies. Supplies for home dialysis must meet the following requirements.

(1) All drugs, biologicals, and legend medical devices must be obtained for each client pursuant to a physician's prescription in accordance with applicable rules of the Texas State Board of Pharmacy.

(2) In conjunction with the client's primary care [~~attending~~] physician, the agency must ensure that there are sufficient supplies maintained in the client's home to perform the scheduled dialysis treatments and to provide a reasonable number of backup items for replacements, if needed, due to breakage, contamination, or defective products. All dialysis supplies, including medications, must be delivered directly to the client's home by a vendor of such products. However, agency personnel may transport prescription items from a vendor's place of business to the client's home for the client's convenience, so long as the item is properly labeled with the client's name and direction for use. Agency personnel may transport medical devices for reuse.

(z) Emergency procedures. The agency must adopt and enforce policies and procedures for medical emergencies and emergencies resulting from a disaster.

(1) Procedures must be individualized for each client to include the appropriate evacuation from the home and emergency telephone numbers. Emergency telephone numbers must be posted at each client's home and must include 911, if available, the number of the practitioner [~~physician~~], the ambulance, the qualified RN on call for home dialysis, and any other phone number deemed as an emergency number.

(2) The agency must ensure that the client and the client's family know the agency's procedures for medical emergencies and emergencies resulting from a disaster.

(3) The agency must ensure that the client and the client's family know the procedure for disconnecting the dialysis equipment.

(4) The agency must ensure that the client and the client's family know emergency call procedures.

(5) A working telephone must be available during the dialysis procedure.

(6) Depending on the kinds of medications administered, an agency must have available emergency drugs as specified by the medical director.

(7) In the event of a medical emergency or an emergency resulting from a disaster requiring transport to a hospital for care, the agency must ensure [~~assure~~] the following:

(A) the receiving hospital is given advance notice of the client's arrival;

(B) the receiving hospital is given a description of the client's health status; and

(C) the selection of personnel, vehicle, and equipment are appropriate to effect a safe transfer.

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

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SUBCHAPTER E. LICENSURE SURVEYS AND INVESTIGATIONS OF ABUSE, NEGLECT, AND EXPLOITATION

DIVISION 1. GENERAL

26 TAC §§558.501, 558.503, 558.507, 558.510

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments and new section affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.501. Survey and Investigation Frequency.

(a) [~~At a minimum,~~] HHSC conducts an initial [~~a~~] survey[~~:~~] [~~(1)~~] after an agency submits a written request for an initial survey in accordance with §558.521 of this subchapter (relating to Requirements for an Initial Survey).[~~; and~~]

(b) [~~(2)~~] After conducting an initial survey, HHSC may conduct a survey within 18 months [~~after conducting an initial survey~~] and must conduct an on-site survey at least every 36 months after the most recent on-site survey. [~~thereafter.~~]

(c) [~~(b)~~] HHSC has the authority to [~~may~~] conduct a survey or investigation to [~~determine an agency's compliance with~~]:

(1) determine an agency's compliance with this chapter or the statute [~~Statute~~] in the provision of licensed home health services, licensed and certified home health services, hospice services, or personal assistance services; [~~and~~]

(2) determine an agency's compliance with federal requirements in the provision of licensed and certified home health services or licensed and certified hospice services;[~~.~~]

(3) investigate complaints;

(4) investigate incidents of abuse, neglect or exploitation; and

(5) conduct other surveys as HHSC deems appropriate.

(d) [~~(c)~~] HHSC may conduct a survey for the renewal of a license or the issuance of a branch office or ADS license.

(e) HHSC conducts a Life Safety Code survey before issuing a license for an initial parent agency or ADS with the category of hospice services with an inpatient unit.

§558.503. Accreditation Process and Exemption from [~~From~~] a Survey.

(a) HHSC maintains authority at all times to enter an agency regardless of accreditation status [~~Except~~] for the investigation of complaints and incidents. An [~~, an~~] agency is exempt from additional surveys by HHSC if the agency maintains accreditation status for the services for which the agency seeks exemption and applicable to the agency's category of license from an accreditation organization with current HHSC approval. All accreditation organizations with current HHSC approval are listed on the HCSSA website. [~~As of the effective date of this rule, accreditation organizations with current HHSC approval on its HCSSA licensure website are the Joint Commission, Community Health Accreditation Partner, and Accreditation Commission for Health Care, Inc.~~]

(b) If an agency seeks an exemption, the agency must maintain accreditation status with an accreditation organization that has entered into a memorandum of agreement with HHSC in accordance with Texas Health and Safety Code §142.006.

(c) HHSC requires an accreditation organization to have standards that meet or exceed the requirements for licensing under the statute and this chapter.

(d) For each accredited category of service, an agency must demonstrate exemption from a licensing survey by:

(1) sending the accreditation documentation from the accreditation organization to the agency's designated regional survey office within seven days after the agency receives the accreditation documentation; and

(2) submitting a copy of the accreditation documentation to HHSC within seven days after the agency receives the accreditation documentation through an application in the online portal that the agency receives from the accreditation organization.

(e) If an agency receives accreditation documentation after the agency submits a written request to HHSC for an initial licensure health survey, the agency may demonstrate that it is exempt from the survey by sending the accreditation documentation to the HHSC designated survey office before HHSC arrives at the agency to conduct an initial health survey.

(f) With each renewal application, an agency accredited by an accreditation organization must submit to HHSC through an application in the online portal a copy of the accreditation documentation that the agency receives from the accreditation organization.

(g) For each accredited category of service, an agency with a change in accreditation status must submit an application through the online portal no later than five days after:

(1) involuntary loss of accreditation; or

(2) voluntarily discontinuing accreditation.

(h) An agency with accreditation status must ensure ongoing compliance with all applicable licensing standards and this chapter.

(i) An agency with accreditation status must maintain documentation of accreditation organization surveys and outcomes available to be reviewed by HHSC.

§558.507. Agency Cooperation with a Survey.

(a) By applying for or holding a license, an agency consents to entry and survey by a HHSC representative to verify compliance with the statute [~~Statute~~] or this chapter.

(b) An agency must provide the HHSC representative [~~surveyor~~] access to all agency electronic or hardcopy records required by HHSC to be maintained by or on behalf of the agency.

(c) If an HHSC representative [~~a surveyor~~] requests an agency record that is stored at a location other than the survey site, the agency must provide the record to the HHSC representative [~~surveyor~~] within eight working hours after the request.

(d) An agency must provide the HHSC representative [~~surveyor~~] with copies of agency records upon request.

(e) During a survey, agency staff must not:

(1) make a false statement of a material fact about a matter under investigation by HHSC that a person knows, or should know, is false;

(2) willfully interfere with the work of an [~~a~~] HHSC representative;

(3) willfully interfere with an [~~a~~] HHSC representative in preserving evidence of a violation; or

(4) refuse to allow an [~~a~~] HHSC representative to inspect a book, record, or file required to be maintained by or on behalf of an agency.

(f) An agency must provide an [~~a~~] HHSC representative with a reasonable and safe workspace, free from hazards, at which to conduct a survey at a parent office, branch office, or ADS.

(g) If there is a disagreement between the agency and the [~~a~~] HHSC representative, the program manager or designee in the designated survey office determines what is reasonable and safe. After consulting with the program manager or designee and obtaining the program manager's agreement, the HHSC representative will notify the agency administrator or designee if the requirement in subsection (f) of this section is not met. Within two working hours of this notice the agency must:

(1) provide the [~~a~~] HHSC representative with a different workspace at the agency that meets the requirement in subsection (f) of this section; or

(2) correct the unmet requirement in such a way as to allow the representative to reasonably and safely conduct the survey.

(h) If an agency willfully refuses to comply with subsection (g) of this section, thereby interfering with the work of the HHSC representative, the representative will terminate the survey and recommend enforcement action as described in subsection (i) of this section.

(i) HHSC may assess an administrative penalty without an opportunity to correct for a violation of provisions in this section, or may take other enforcement action to deny, revoke, or suspend a license, if an agency does not cooperate with a survey.

§558.510. Prioritization of Abuse, Neglect, and Exploitation Investigations.

(a) HHSC initiates an investigation of alleged abuse, neglect, or exploitation (ANE) of a client based on the following prioritization:

(1) immediate threat to the health or safety of a client, as defined in §558.2 of this chapter (relating to Definitions), or priority 1 (P1), on or before two working days from receipt of an intake by HHSC Complaint and Incident Intake (CII); and

(2) non-immediate threat-high, or priority 2 (P2), on or before 45 days from receipt of an intake by HHSC CII; this priority is assigned when the present and ongoing threat of continued ANE has been removed.

(b) HHSC contacts the alleged victim once the investigation has been initiated with the agency.

(c) HHSC conducts an unannounced on-site investigation for ANE within the intake priority time periods described in subsection (a) of this section. Upon entrance, an HHSC representative or an HHSC team notifies the HCSSA of the alleged ANE and provides the HCSSA with:

(1) the type of investigation, complaint or incident; and

(2) the alleged allegation category listed on the intake.

(d) During the investigation, the HHSC representative verifies from interviewing the administrator that the HCSSA has reported the ANE incident to HHSC CII, as described in §558.249(c) of this chapter (relating to Incidents of Abuse, Neglect, and Exploitation). If the agency has failed to report the ANE incident to HHSC CII, the agency is out of compliance with §558.249(c) of this chapter.

(e) At the conclusion of the investigation, the HHSC representative enters a finding about whether the ANE allegation is substantiated or unsubstantiated.

(f) At the conclusion of the investigation, the HHSC representative conducts an exit conference with the HCSSA. The purpose of this exit conference is to informally communicate preliminary findings of the ANE investigation and to give the HCSSA the Preliminary Findings Based on Survey, Inspection or Investigation (HHSC Form 3701).

(g) The HHSC representative documents on the Preliminary Findings Based on Survey, Inspection or Investigation (HHSC Form 3701) and provides the preliminary findings of the ANE investigation, including:

(1) the intake number;

(2) the name of the alleged perpetrator;

(3) whether each allegation of ANE is substantiated or unsubstantiated;

(4) whether the employee is referred to HHSC Enforcement to consider a reportable conduct referral; and

(5) whether the employee is referred to the Texas Board of Nursing.

(h) Within 10 working days from the exit conference, HHSC sends the HCSSA the Statement of Violations or Deficiencies and Plan of Correction for each visit.

(i) Upon completion of an investigation of ANE, HHSC notifies the reporter of the allegation in writing of the finding of the investigation and the method to appeal the finding as described in subsection (l) of this section. An HHSC representative provides the notification within five working days of completion of the investigation.

(j) The victim or alleged victim, and LAR are notified of the finding of the investigation and the method to appeal the finding. An HHSC representative provides the notification within five working days of completion of the investigation.

(k) For each appeal request, HHSC conducts a review and determines if a reinvestigation is warranted to collect additional evidence. If a review of the records or a reinvestigation results in a change of the ANE finding, HHSC notifies the alleged victim and LAR, or the reporter of the outcome of the appeal and any reinvestigation in writing.

(l) An alleged or designated perpetrator may not request an appeal even if the alleged or designated perpetrator is the reporter or administrator.

(m) HHSC alone may appoint a person to conduct an investigation review or reopen an investigation to collect additional evidence. If a review of the records and any additional investigation results in a change of the ANE finding, the reviewer or reviewer's designee notifies the appropriate parties in writing.

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DIVISION 2. THE SURVEY PROCESS

26 TAC §558.527

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The repeal affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.527. Post-Survey Procedures.

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

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26 TAC §§558.521, 558.523, 558.525, 558.527, 558.529

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments and new sections affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.521. Requirements for an Initial Survey.

(a) No later than six months after the effective date of an agency's initial license, an agency must:

(1) admit and provide services to clients as described in subsection (c) [~~(b)~~] of this section; and

(2) except as provided in subsection (h) [~~(f)~~] of this section, submit a written request for an initial licensure survey to the designated survey office, as described in subsection (d) [~~(c)~~] of this section.

(b) The agency must submit the letter of readiness within six months, regardless of the agency's ability to obtain payer source authorization or secure a contract for services.

(c) [~~(b)~~] Before submitting a written request to HHSC for an initial licensure survey, an agency must admit clients and provide services as described in this subsection. The categories of service on an initial license may include licensed home health services (LHHS), LHHS with home dialysis designation, hospice services, hospice services with an inpatient unit, and personal assistance services (PAS).

(1) When an initial license includes only one category of service, an agency must admit and provide services to at least one client.

(2) When an initial license includes the LHHS and the PAS categories, an agency must admit and provide LHHS to at least one client.

(3) When an initial license includes the LHHS and the LHHS with home dialysis designation categories, with or without the PAS category, an agency must admit and provide LHHS with home dialysis designation to at least one client.

(4) When an initial license includes the hospice services and the PAS categories, an agency must admit and provide hospice services to at least one client.

(5) When an initial license includes the LHHS and the hospice services categories, with or without the PAS category, an agency must admit and provide:

(A) LHHS services to at least one client; and

(B) [admit and provide] hospice services to at least one client.

(6) When an initial license includes the LHHS[, the LHHS] with home dialysis designation[,] and the hospice services categories, with or without the PAS category, an agency must admit and provide:

(A) LHHS with home dialysis designation to at least one client; and[.]

(B) [The agency must also admit and provide] hospice services to at least one client.

(7) When the initial license includes hospice services with an inpatient unit, an agency must admit and provide hospice services to at least one client.

(d) [(c)] The agency's written request for an initial survey must be submitted to the designated survey office using HHSC Form 2020 Notification of Readiness for Initial Survey for all categories of service. The written request must include the name, date of admission, and the category of service provided to each client admitted for services to demonstrate that the agency has admitted clients and provided services as described in subsection (c) [(b)] of this section.

(e) HHSC may take enforcement action under §558.601 of this chapter (relating to Enforcement Actions), if an agency fails to admit and provide services to at least one client within six months of the issuance of an agency's initial license. The issuance date is the effective date of the agency's license.

(f) [(d)] An agency must have the following information available and ready for review by an HHSC representative [a surveyor] upon the HHSC representative's [surveyor's] arrival at the agency:

(1) a list of clients who are receiving services or who have received services from the agency for each category of service licensed, and the[. The] list must comply with the requirements of §558.293 of this chapter (relating to Client List and Services);

(2) the client records for each client admitted during the licensing period before the initial survey;

(3) all agency policies as required by this chapter; and

(4) all personnel records of agency employees.

(g) [(e)] HHSC may propose to deny an application to renew, or revoke or suspend, an initial license for the reasons specified in §558.15(c) of this chapter (relating to Issuance of an Initial License).

(h) [(f)] An agency is not required to request an initial survey in accordance with subsection (a)(2) of this section if the agency is exempt from the survey as specified in §558.503 of this subchapter (relating to Accreditation Process and Exemption from [From] a Survey). [To demonstrate that it is exempt, the agency must send the accreditation documentation from the accreditation organization to the HHSC designated survey office no later than six months after the effective date of its license.]

[(g) If an agency receives written notice of accreditation from the accreditation organization after the agency submits a written request to HHSC for an initial licensure survey, the agency may demonstrate that it is exempt from the survey by sending the accreditation documentation to the HHSC designated survey office before HHSC arrives at the agency to conduct an initial survey.]

§558.523. Personnel Requirements for a Survey.

(a) For an initial survey, the administrator or alternate administrator must:

(1) be present at the entrance conference;[,]

(2) be available in person, [or] by telephone, or by telecommunications during the survey;[,] and

(3) be present in person at the exit conference.

(b) For a survey other than an initial survey, the administrator or alternate administrator must:

(1) be available in person, [or] by telephone, or by telecommunications during the entrance conference and the survey; and

(2) [must] be present in person at the exit conference.

(c) The supervising nurse or alternate supervising nurse must be available in person, [or] by telephone, or by telecommunications [if necessary,] to provide information unique to the duties and functions of the position during the survey.

(d) If a required individual is not available during the survey process and is not present at the agency when the HHSC representative arrives, the HHSC representative will start the survey process with the designated individual as described in subsection (e) of this section. [unavailable during the survey process and is not at the agency when the surveyor arrives, the surveyor makes reasonable attempts to contact the individual.]

(e) If an HHSC representative arrives at the agency during regular business hours and the agency is closed, an administrator, alternate administrator, or designated agency employee must allow entry to the HHSC representative within two hours after the HHSC representative's arrival. The administrator must provide written designation of the agency employee authorized to grant entry to an HHSC representative for survey purposes. The agency must comply with all notice requirements described in §558.210 of this chapter (relating to Agency Place of Business and Operating Hours). [If a surveyor arrives during regular business hours and the agency is closed, an administrator, alternate administrator, or a designated agency representative must provide the surveyor entry to the agency within two hours after the surveyor's arrival at the agency. The administrator must designate in writing the agency representatives who may grant entry to a surveyor. The agency must comply with notice requirements described in §558.210 of this chapter (relating to Agency Operating Hours).]

(f) If the HHSC representative [surveyor] is unable to contact a required individual or the agency fails to comply with subsection (e) of this section, HHSC may take enforcement action under §558.601 of this chapter (relating to Enforcement Actions) [the surveyor may recommend enforcement action] against the agency.

(g) If compliance with this section would cause an interruption in client care being provided by the administrator, the alternate administrator, the supervising nurse, or the alternate supervising nurse, the

administrator must contact its backup service provider to ensure continued client care.

§558.525. Survey Procedures.

(a) Before beginning a survey, the HHSC representative [~~a surveyor~~] holds an entrance conference, as specified in §558.523 of this division (relating to Personnel Requirements for a Survey), to explain the purpose of the survey and the survey process and provide [~~provides~~] an opportunity to ask questions.

(b) During a survey, the HHSC representative [~~a surveyor~~]:

(1) conducts at least three home or inpatient unit visits to determine an agency's compliance with licensing requirements;

(2) reviews any agency records that the HHSC representative deems [~~surveyor believes are~~] necessary to determine an agency's compliance with licensing requirements; [~~and~~]

(3) conducts interviews with clients, staff, contractors, volunteers, and others as applicable; and

(4) [~~(3)~~] evaluates an agency's compliance with each standard.

(c) An agency accredited by an accreditation organization must have the documentation of accreditation available at the time of a survey.

(d) HHSC keeps agency records confidential, except as allowed by Texas Health and Safety Code §142.009(d), Texas Human Resources Code §48.101 and Texas Family Code §261.201.

(e) The HHSC representative [~~A surveyor~~] may remove original agency records from an agency only with the consent of the agency, as provided in Texas Health and Safety Code §142.009(e).

(f) All reports, records, and working papers used or developed by HHSC in an investigation are confidential and may be released only as provided by federal or state law or this subsection.

(1) Completed written investigation reports on cases concluded to be abuse, neglect, or exploitation must be provided to the district attorney and appropriate law enforcement agency in accordance with applicable law. HHSC may release these reports to any other public agency HHSC deems appropriate to the investigation.

(2) Completed written investigation reports are open to the public, provided the report is deidentified through the open records process in accordance with Texas Government Code Chapter 552. The process of deidentification means:

(A) removing all names and personal, medical, or other identifiable data, and;

(B) other information excepted from release under Texas Government Code Chapter 552 or other law, including any information:

(i) from witnesses and others furnished to HHSC as part of the investigation, or;

(ii) that would reveal the identity of the reporter, complainant, or informant.

(3) HHSC notifies the reporter and the agency of the results of the HHSC investigation of a reported case of abuse, neglect, or exploitation, whether HHSC concludes that abuse, neglect, or exploitation occurred or did not occur.

(4) Upon request, the investigative report may be released by HHSC to the alleged victim or LAR, including any concealed information that would reveal the identities of the reporter, complainant, informant, and any individual receiving services who is not the victim or alleged victim.

§558.527. Plan of Removal.

(a) If, during an on-site survey, HHSC finds that a violation has caused an immediate threat to the health and safety of a client, the agency must immediately submit a plan of removal to HHSC. Along with the plan of removal, the agency must also provide documentation and other relevant information, that demonstrates appropriate action taken by the agency to resolve the immediate threat.

(b) The plan of removal must include:

(1) a description of steps the agency will take to remove the immediacy of the violation;

(2) a description of how affected or potentially affected clients will be identified;

(3) the actions or changes the agency will make to ensure the violation does not reoccur;

(4) the identities of agency staff responsible for oversight and implementation of the actions or changes;

(5) the steps to be taken to monitor the changes; and

(6) a timeline for implementing all actions identified by the agency in the plan of removal.

(c) The agency must provide a plan of removal upon request from HHSC.

(d) The agency must implement all actions identified in the plan of removal.

§558.529. Post-Survey Procedures.

(a) After a survey is completed, the HHSC representative holds an exit conference with the administrator or alternate administrator to inform the agency of the preliminary findings.

(b) An agency may make an audio recording of the exit conference only if the agency:

(1) records two tapes simultaneously;

(2) allows the HHSC representative to review the tapes; and

(3) gives the HHSC representative the tape of the representative's choice before leaving the agency.

(c) An agency may make a video recording of the exit conference only if the HHSC representative agrees to allow it and if the agency:

(1) records two tapes simultaneously;

(2) allows the HHSC representative to review the tapes; and

(3) gives the HHSC representative the tape of the representative's choice before leaving the agency.

(d) An agency may submit additional written documentation and facts after the exit conference only if the agency describes the additional documentation and facts to the HHSC representative during the exit conference.

(1) The agency must submit the additional written documentation and facts to the designated survey office within two working days after the end of the exit conference.

(2) If an agency properly submits additional written documentation, the HHSC representative may add the documentation to the record of the survey.

(e) If HHSC identifies additional violations or deficiencies after the exit conference, HHSC holds an additional face-to-face exit conference with the agency regarding the additional violations or deficiencies.

(f) HHSC provides official written notification of the survey findings to the agency within 10 working days after the exit conference.

(g) The official written notification of the survey findings includes a statement of violations, condition-level deficiencies, or both, cited by HHSC against the agency and instructions for submitting an acceptable plan of correction and for requesting informal dispute resolution (IDR).

(1) If the official written notification of the survey findings declares that an agency is in violation of the statute or this chapter, an agency must follow HHSC instructions included with the statement of violations for submitting an acceptable plan of correction.

(2) An acceptable plan of correction includes the corrective measures and time frame with which the agency must comply to ensure correction of a violation. If an agency fails to correct each violation by the date on the plan of correction, HHSC may take enforcement action against the agency. An agency must correct a violation in accordance with the following time frames.

(A) A Severity Level B violation that results in serious harm to or death of a client or constitutes a serious threat to the health or safety of a client, must be addressed upon receipt of the official written notice of the violations and corrected within two days.

(B) A Severity Level B violation that substantially limits the agency's capacity to provide care must be corrected within seven days after receipt of the official written notice of the violations.

(C) A Severity Level A violation that has or had minor or no health or safety significance must be corrected within 20 days after receipt of the official written notice of the violations.

(D) A violation that is not designated as Severity Level A or Severity Level B must be corrected within 60 days after the date the violation was cited.

(3) An agency must submit an acceptable plan of correction for each violation or deficiency no later than 10 days after receipt of the official written notification of the survey findings.

(4) If HHSC finds the plan of correction unacceptable, HHSC notifies the agency in writing and provides the agency one additional opportunity to submit an acceptable plan of correction. An agency must submit a revised plan of correction no later than 30 days after the agency's receipt of HHSC written notice of an unacceptable plan of correction.

(h) An acceptable plan of correction does not preclude HHSC from taking enforcement action against an agency.

(i) An agency must submit a plan of correction in response to an official written notification of survey findings that declares a violation or deficiency even if the agency disagrees with the survey findings.

(j) If an agency disagrees with the survey findings citing a violation or condition-level deficiency, the agency may request IDR to refute the violation or deficiency.

(1) HHSC does not grant an agency's request for IDR if:

(A) HHSC cited the violation or deficiency at the agency's immediately preceding survey; and

(B) HHSC cited the violation or deficiency again, with no new findings.

(2) To request IDR, an agency must mail, fax, or email:

(A) a complete and accurate IDR request form to the address or fax number listed on the form, which must be postmarked or faxed within 10 days after the date of receipt of the official written notification of the survey findings;

(B) a rebuttal letter and supporting documentation to the address or fax number listed on the IDR request form and ensure receipt by the HHSC Regulatory Enforcement Division within seven days after the postmark or fax date of the IDR request form; and

(C) a copy of the IDR request form, rebuttal letter, and supporting documentation to the designated survey office within the same time frames each is submitted to the HHSC Regulatory Enforcement Division.

(3) An agency may not submit information after the deadlines established in paragraph (2)(A) and (B) of this subsection unless HHSC requests additional information. The agency's response to HHSC's request for information must be received within three working days after the request is made.

(4) An agency waives its right to IDR if the agency fails to submit the required information to the HHSC Regulatory Enforcement Division within the required time frames.

(5) An agency must present sufficient information to the HHSC Regulatory Enforcement Division to support the agency's desired IDR outcome.

(6) The rebuttal letter and supporting documentation must include:

(A) identification of the disputed deficiencies or violations;

(B) the reason the deficiencies or violations are disputed;

(C) the desired outcome for each disputed deficiency or violation; and

(D) copies of client records, policies and procedures, and other documentation and information that directly demonstrate that the condition-level deficiency or violation should not have been cited.

(7) The written decision issued by HHSC after the completion of its review is the final decision from IDR.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

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SUBCHAPTER F. ENFORCEMENT

26 TAC §§558.601, 558.602, 558.604

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.601. Enforcement Actions.

(a) Enforcement actions. HHSC may take the following enforcement actions against an agency:

(1) license suspension;

(2) immediate license suspension;

(3) license revocation;

(4) immediate license revocation;

(5) administrative penalties; and

(6) denial of license application.

(b) Denial of license application. HHSC may deny a license application for the reasons set out in §558.21 of this chapter (relating to Denial of an Application or a License).

(c) Suspension or revocation.

(1) HHSC may suspend or revoke an agency's license if the license holder, the controlling person, the affiliate, the administrator, or the alternate administrator:

(A) fails to comply with this chapter;

(B) fails to comply with the statute [~~Statute~~]; or

(C) violates Texas Occupations Code §102.001 [(~~relating to Soliciting Patients; Offense~~)] and §102.006 [(~~relating to Failure to Disclose; Offense~~)].

(2) HHSC may suspend or revoke an agency's license to provide licensed and certified home health services if the agency fails to maintain its certification qualifying the agency as a certified agency, as referenced in Texas Health and Safety Code §142.011(c).

(d) Administrative penalties.

(1) HHSC may assess an administrative penalty against an agency in accordance with §558.602 of this subchapter (relating to Administrative Penalties).

(2) HHSC may consider the assessment of past administrative penalties when considering another enforcement action against an agency.

(e) Immediate licensure suspension or revocation. HHSC may immediately suspend or revoke an agency's license when the health and safety of persons are threatened.

(1) If HHSC issues an order for immediate suspension or revocation of the agency's license, HHSC provides immediate notice to the controlling person, administrator, or alternate administrator of the agency by fax and either by certified mail with return receipt requested or hand-delivery. The notice includes:

(A) the action taken;

(B) legal grounds for the action;

(C) the procedure governing appeal of the action; and

(D) the effective date of the order.

(2) An order for immediate suspension or revocation goes into effect immediately.

(3) An agency is entitled to a formal administrative hearing not later than seven days after the effective date of the order for immediate suspension or revocation.

(4) If an agency requests a formal administrative hearing, the hearing is held in accordance with the Texas Government Code Chapter 2001, and with the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 110 of this title [~~40 TAC Chapter 91~~](relating to Hearings Under the Administrative Procedure Act).

(f) Opportunity to show compliance.

(1) Before revocation or suspension of an agency's license or denial of an application for the renewal of an agency's license, HHSC gives the license holder:

(A) a notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action, with a copy sent to the agency; and

(B) an opportunity to show compliance with all requirements of law for the retention of the license by sending the HHSC Regulatory Enforcement Division [~~Services~~] office a written request. The request must:

(i) be postmarked within 10 days after the date of HHSC notice and be received in HHSC Regulatory Enforcement Division [~~Services~~] office within 10 days after the date of the postmark; and

(ii) contain specific documentation refuting HHSC allegations.

(2) HHSC limits its review to the documentation submitted by the license holder and information HHSC used as the basis for its proposed action. An agency may not attend the HHSC meeting to review the opportunity to show compliance. HHSC gives a license holder a written affirmation or reversal of the proposed action.

(3) After the agency has an opportunity to show compliance, HHSC sends a license holder a written notice that:

(A) informs the license holder of the HHSC decision; and

(B) provides the agency with an opportunity to appeal the HHSC decision through a formal hearing process.

(g) Notice of denial of application for license or renewal of a license, suspension or revocation of license. HHSC sends an applicant or license holder notice by fax and either by certified mail with return receipt requested, or hand-delivery of the HHSC denial of an application for an initial license or renewal of a license, suspension of a license or revocation of a license.

(h) Formal appeal. An applicant or license holder has the right to make a formal appeal after receipt of the HHSC notice [~~notification~~] of denial of an application for an initial license or renewal of a license, [~~and~~] suspension of a license, or revocation of a license.

(1) An agency must request a formal administrative hearing within 20 days of receipt of the HHSC notice of denial of an application for an initial license or renewal of a license, suspension of a license, or revocation of a license. To make a formal appeal, the applicant or agency must comply with the formal hearing procedures in 1 TAC Chapter 357, Subchapter I and Chapter 110 of this title. [~~40 TAC Chapter 91.~~]

(2) HHSC presumes receipt of HHSC notice to occur on the 10th day after the notice is mailed to the last known address, unless another date is reflected on the return receipt.

(3) If an agency does not meet the deadline for requesting a formal hearing, the agency has lost its opportunity for a formal hearing, and HHSC enforces [~~takes~~] the proposed action.

(4) A formal administrative hearing is held in accordance with Texas Government Code[~~,~~] Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I and Chapter 110 of this title. [~~40 TAC Chapter 91.~~]

(5) Except for the denial of an application for an initial license, if an agency appeals, the license remains valid until all appeals are final, unless the license expires without a timely application for renewal submitted to HHSC. The agency must continue to submit a renewal application in accordance with §558.17 of this chapter (relating to Application Procedures for a Renewal License) until the action to revoke, suspend, or deny renewal of the license is completed. However, HHSC does not renew the license until it determines the reason for the proposed action no longer exists.

(6) If an agency appeals, the enforcement action will take effect when all appeals are final, and the proposed enforcement action is upheld. If the agency wins the appeal, the proposed action does not happen.

(7) If HHSC suspends a license, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists. A suspension may last no longer than the term of the license. HHSC conducts a survey of the agency before making a determination to recommend cancellation of a suspension.

(8) If HHSC revokes or does not renew a license and two years have [~~one year has~~] passed following the effective date of revocation or denial of licensure renewal, a person may reapply for a license by complying with the requirements and procedures in §558.13 of this chapter (relating to Obtaining an Initial License). HHSC does not issue a license if the reason for revocation or nonrenewal continues to exist.

(i) Agency dissolution. Upon suspension, revocation, or nonrenewal of a license, the license holder must comply with the following.[~~:~~]

(1) If agency dissolution occurs and no enforcement action is in effect, the license holder must:

(A) [~~(1)~~] destroy [~~return~~] the original license [~~to HHSC~~]; [~~and~~]

(B) notify HHSC Licensing and Credentialing that the license has been destroyed; and

(C) [~~(2)~~] implement its written plan required in §558.291 of this chapter (relating to Agency Dissolution) and §558.217 of this chapter (relating to Agency Closure Procedures and Voluntary Suspension of Operations).

(2) If agency dissolution occurs and enforcement action is in effect, the license holder must:

(A) destroy the original license;

(B) notify HHSC Licensing and Credentialing and HHSC Regulatory Enforcement Division that the license has been destroyed; and

(C) implement its written plan required in §558.291 of this chapter and §558.217 of this chapter.

§558.602. Administrative Penalties.

(a) Assessing penalties. HHSC may assess an administrative penalty against a person who violates:

(1) the statute [~~Statute~~];

(2) a provision in this chapter for which a penalty may be assessed; or

(3) Texas Occupations Code §102.001 [~~(relating to Soliciting Patients; Offense)~~] or §102.006 [~~(relating to Failure to Disclose; Offense)~~], if related to the provision of home health, hospice, or personal assistance services.

(b) Criteria for assessing penalties. HHSC assesses administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section.

(1) The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(B) the history of previous violations by a person or a controlling person with respect to that person;

(C) whether the affected agency identified the violation as part of its internal quality assurance process and made a good faith, substantial effort to correct the violation in a timely manner;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

(2) In determining which violation warrants a penalty, HHSC considers:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(B) whether the affected agency identified the violation as part of its internal quality assurance program and made a good faith, substantial effort to correct the violation in a timely manner.

(c) Opportunity to correct. Except as provided in subsections (e) and (f) of this section, HHSC provides an agency with an opportunity to correct a violation in accordance with the time frames established in §558.529(g)(2) [~~§558.527(g)(2)~~]of this chapter (relating to Post-Survey Procedures) before assessing an administrative penalty if a plan of correction has been implemented.

(d) Minor violations.

(1) HHSC may not assess an administrative penalty for a minor violation unless the violation is of a continuing nature or is not corrected in accordance with an accepted plan of correction.

(2) HHSC may assess an administrative penalty for a subsequent occurrence of a minor violation when cited within three years from the date the agency first received written notice of the violation.

(3) HHSC does not assess an administrative penalty for a subsequent occurrence of a minor violation when cited more than three years from the date the agency first received written notice of the violation.

(e) No opportunity to correct. HHSC may assess an administrative penalty without providing an agency with an opportunity to correct a violation if HHSC determines that the violation:

(1) results in serious harm to or death of a client;

(2) constitutes a serious threat to the health or safety of a client;

(3) substantially limits the agency's capacity to provide care;

(4) involves the provisions of Texas Human Resources Code Chapter 102[, ~~Rights of the Elderly~~]; or

(5) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by HHSC;

(B) refuses to allow a representative of HHSC to inspect a book, record, or file required to be maintained by an agency;

(C) willfully interferes with the work of a representative of HHSC or the enforcement of this chapter;

(D) willfully interferes with a representative of HHSC preserving evidence of a violation of this chapter or a rule, standard, or order adopted, or license issued under this chapter;

(E) fails to pay a penalty assessed by HHSC under this chapter within 10 days after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction within 10 days after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction within 30 days after the date the person receives notification from HHSC that the previously submitted plan of correction is not acceptable.

(f) Violations relating to advance directives [~~Advance Directives~~]. As provided in Texas Health and Safety Code §142.0145, HHSC assesses an administrative penalty of $500 for a violation of §558.283 of this chapter (relating to Advance Directives) without providing an agency with an opportunity to correct the violation.

(g) Penalty calculation and assessment.

(1) Each day that a violation occurs before the date on which the person receives written notice of the violation is considered one violation.

(2) Each day that a violation occurs after the date on which an agency receives written notice of the violation constitutes a separate violation.

(h) Schedule of appropriate and graduated penalties.

(1) If two or more rules listed in paragraphs (2) and (3) of this subsection relate to the same or similar matter, one administrative penalty may be assessed at the higher severity level violation.

(2) Severity Level A violations.

(A) The penalty range for a Severity Level A violation is $100 - $250 per violation.

(B) A Severity Level A violation is a violation that has or has had minor or no client health or safety significance.

(C) HHSC assesses a penalty for a Severity Level A violation only if the violation is of a continuing nature or was not corrected in accordance with an accepted plan of correction.

(D) HHSC may assess a separate Severity Level A administrative penalty for each of the rules listed in the following table.
Figure: 26 TAC §558.602(h)(2)(D)
[~~Figure: 26 TAC §558.602(h)(2)(D)~~]

(3) Severity Level B violations.

(A) The penalty range for a Severity Level B violation is $500-$1,000 per violation.

(B) A Severity Level B violation is a violation that:

(i) results in serious harm to or death of a client;

(ii) constitutes an actual serious threat to the health or safety of a client; or

(iii) substantially limits the agency's capacity to provide care.

(C) The penalty for a Severity Level B violation that:

(i) results in serious harm to or death of a client is $1,000;

(ii) constitutes an actual serious threat to the health or safety of a client is $500 - $1,000; and

(iii) substantially limits the agency's capacity to provide care is $500 - $750.

(D) As provided in subsection (e) of this section, a Severity Level B violation is a violation for which HHSC may assess an administrative penalty without providing an agency with an opportunity to correct the violation.

(E) HHSC may assess a separate Severity Level B administrative penalty for each of the rules listed in the following table.
Figure: 26 TAC §558.602(h)(3)(E)
[~~Figure: 26 TAC §558.602(h)(3)(E)~~]

(i) Violations for which HHSC may assess an administrative penalty of $500.

(1) HHSC may assess an administrative penalty of $500 for each of the violations listed in subsection (e)(4) and (5) of this section, without providing an agency with an opportunity to correct the violation.

(2) A separate penalty may be assessed for each of these violations.

(j) Proposal of administrative penalties.

(1) If HHSC assesses an administrative penalty, HHSC provides a written notice of violation letter to an agency. The notice includes:

(A) a summary of the violation;

(B) the amount of the proposed penalty; and

(C) a statement of the agency's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(2) An agency may accept an HHSC determination within 20 days after the date on which the agency receives the notice of violation letter, including the proposed penalty, or may make a written request for a formal administrative hearing on the determination.

(A) If an agency notified of a violation accepts the HHSC determination, the HHSC executive commissioner or the HHSC executive commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(B) If an agency notified of a violation does not accept the HHSC determination, the agency must submit to HHSC [~~the Health and Human Services Commission~~] a written request for a formal administrative hearing on the determination and must not pay the proposed penalty. Remittance of the penalty to HHSC is deemed acceptance by the agency of the HHSC determination, is final, and waives the agency's right to a formal administrative hearing.

(C) If an agency notified of a violation fails to respond to the notice of violation letter within the required time frame, the HHSC executive commissioner or the HHSC executive commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(D) If an agency requests a formal administrative hearing, the hearing is held in accordance with the statute in Texas Health and Safety Code [~~Statute~~] §142.0172 and [~~,~~] §142.0173, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 110 of this title [~~40 TAC Chapter 91~~] (relating to Hearings Under the Administrative Procedure Act).

§558.604. Surrender or Expiration of a License.

(a) If an agency surrenders the agency's license or allows the agency's license to expire without seeking renewal, HHSC will deny any application for a license by the agency, the license holder, and any affiliate for two years starting from the date the license is surrendered or expires. [~~After a survey in which a surveyor cited deficiencies, an agency may surrender its license or allow its license to expire to avoid enforcement action by HHSC.~~]

(b) An agency may surrender the agency's license or allow the license to expire instead of facing enforcement action by HHSC. This option is subject to following.

(1) If an agency receives notice of an administrative penalty and surrenders the agency's license or allows the agency's license to expire instead of paying the administrative penalty, HHSC will deny any future application for a license by the agency, the license holder, and any affiliate for two years starting from the date the license is surrendered or expires. HHSC will not approve any application until the full amount of the delinquent administrative penalty is paid.

(2) If an agency receives notice of enforcement action for license revocation, license suspension, or denial of license renewal, and surrenders the license or allows the license to expire to avoid enforcement action, HHSC will deny any future application for a license by the agency, the license holder, and any affiliate for two years from the date the license is surrendered or expires.

(c) [~~(b)~~] For an agency's license to be considered surrendered [~~If an agency surrenders its license~~] before the expiration date, the agency must destroy [~~return~~] its original license and provide the following information to HHSC:

(1) notice to HHSC that the license has been destroyed;

(2) [~~(1)~~] the effective date of closure;

(3) [~~(2)~~] the location of client records;

(4) [~~(3)~~] the name and address of the client record custodian;

(5) [~~(4)~~] a statement signed and dated by the license holder agreeing to the surrender of the license; and

(6) [~~(5)~~] the disposition of active clients at the time of closure.

[~~(c) If an agency surrenders its license or allows its license to expire, HHSC denies an application for license by the agency, its license holder, and its affiliate for one year after the date of the surrender or expiration.~~]

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

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SUBCHAPTER G. HOME HEALTH AIDES

26 TAC §558.701

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendment affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.701. Home Health Aides.

(a) A home health aide may be used by an agency providing licensed home health services if the aide meets one of the following requirements:

(1) a minimum of one year of full-time experience in direct client care in an institutional setting (hospital or nursing facility);

(2) one year of full-time experience within the last five years in direct client care in an agency setting;

(3) satisfactorily completed a training and competency evaluation program that complies with the requirements of this section;

(4) satisfactorily completed a competency evaluation program that complies with the requirements of this section;

(5) submitted to the agency documentation from the director of programs or the dean of a school of nursing that states that the individual is a nursing student who has demonstrated competency in providing basic nursing skills in accordance with the school's curriculum; or

(6) listed on the HHSC nurse aide registry (NAR) with no finding against the aide relating to client abuse or neglect or misappropriation of client property.

(b) A home health aide must have provided home health services within the previous 24 months to qualify under subsection (a)(3) or (4) of this section.

(c) Assignment, delegation, and supervision of services provided by home health aides must be performed in accordance with rules in this chapter governing the agency's license category.

(d) The training portion of a training and competency evaluation program for home health aides must be conducted by or under the general supervision of an RN who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health care. The training program may contain other aspects of learning, but must contain the following:

(1) a minimum of 75 hours as follows:

(A) an appropriate number of hours of classroom instruction; and

(B) a minimum of 16 hours of clinical experience, which will include in-home training and must be conducted in a home, hospital, nursing home, or laboratory;

(2) completion of at least 16 hours of classroom training before a home health aide begins clinical experience working directly with clients under the supervision of qualified instructors;

(3) if LVN instructors are used for the training portion of the program, the following qualifications and supervisory requirements apply:

(A) an LVN may provide the home health aide classroom training under the supervision of an RN who has two years of nursing experience, at least one year of which must be in the provision of home health care;

(B) LVNs, as well as RNs, may supervise home health aide candidates in the course of the clinical experience; and

(C) an RN must maintain overall responsibility for the training and supervision of all home health aide training students; and

(4) an assessment that the student knows how to read and write English and carry out directions.

(e) The classroom instruction and clinical experience content of the training portion of a training and competency evaluation program must include, but is not limited to:

(1) communication skills;

(2) observation, reporting, and documentation of a client's status and the care or service furnished;

(3) reading and recording temperature, pulse, and respiration;

(4) basic infection control procedures and instruction on universal precautions;

(5) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(6) maintenance of a clean, safe, and healthy environment;

(7) recognizing emergencies and knowledge of emergency procedures;

(8) the physical, emotional, and developmental needs of and ways to work with the populations served by the agency, including the need for respect for the client and his or her privacy and property;

(9) appropriate and safe techniques in personal hygiene and grooming that include:

(A) bed bath;

(B) sponge, tub, or shower bath;

(C) shampoo, sink, tub, or bed;

(D) nail and skin care;

(E) oral hygiene; and

(F) toileting and elimination;

(10) safe transfer techniques and ambulation;

(11) normal range of motion and positioning;

(12) adequate nutrition and fluid intake;

(13) any other task the agency may choose to have the home health aide perform in accordance with §558.298 of this chapter (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation); and

(14) the rights of the elderly.

(f) This section addresses the requirements for the competency evaluation program or the competency evaluation portion of a training and competency evaluation program.

(1) The competency evaluation must be performed by an RN.

(2) The competency evaluation must address each of the subjects listed in subsection (e)(2) - (13) of this section.

(3) Each of the areas described in subsection (e)(3) and (9) - (11) of this section must be evaluated by observation of the home health aide's performance of the task with a client, pseudo-person, or person.

(4) Each of the areas described in subsection (e)(2), (4) - (8), (12), and (13) of this section may be evaluated through written examination, oral examination, or by observation of a home health aide with a client, pseudo-person, or person.

(5) A home health aide is not considered to have successfully completed a competency evaluation if the aide has an unsatisfactory rating in more than one of the areas described in subsection (e)(2) - (13) of this section.

(6) If an aide receives an unsatisfactory rating, the aide must not perform that task without direct supervision by an RN or LVN, until the aide receives training in the task for which he or she was evaluated as unsatisfactory and successfully completes a subsequent competency evaluation with a satisfactory rating on the task.

(7) If an individual fails to complete the competency evaluation satisfactorily, the individual must be advised of the areas in which he or she is inadequate.

(g) The agency may conduct training virtually if the skills and clinical competencies can be taught through a virtual training. If trained virtually, the individual must be able to perform competencies in person for the RN or LVN.

(h) [~~(g)~~] If a person, organization, or healthcare entity that [~~who~~] is not an agency licensed under this section[~~,~~] desires to implement a home health aide training and competency evaluation program or a competency evaluation program, the person, organization, or healthcare entity that must meet the requirements of this section in the same manner as set forth for an agency.

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

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SUBCHAPTER H. STANDARDS SPECIFIC TO AGENCIES LICENSED TO PROVIDE HOSPICE SERVICES

DIVISION 1. HOSPICE GENERAL PROVISIONS

26 TAC §558.801

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendment affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.801. Subchapter H Applicability.

(a) This subchapter applies to an agency licensed with the hospice services category and an agency licensed with the hospice services category with an inpatient unit. An agency licensed to provide hospice services must adopt and enforce written policies in accordance with this subchapter.

(b) A hospice that provides inpatient care directly in its own inpatient unit must comply with the additional standards in Division 7 of this subchapter (relating to [~~Hospice~~] Inpatient Units).

(c) A hospice that provides hospice care to a resident of a skilled nursing facility, nursing facility, or an intermediate care facility for individuals with an intellectual disability or related conditions, must comply with the additional standards in Division 8 of this subchapter (relating to Hospices that Provide Hospice Care to Residents of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions).

(d) A Medicare-certified hospice agency must comply with the Medicare Conditions of Participation in 42 CFR Part 418, Hospice Care.

(e) A person who is not licensed to provide hospice services may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services.

(f) A hospice agency must keep the hospice election statement in the client's record. The start of care must begin on the effective date listed in the hospice election statement.

[~~(f) For the purposes of this subchapter, the term "attending practitioner:"~~]

[~~(1) includes a physician or an advanced practice nurse identified by a hospice client at the time he or she elects to receive hospice services as having the most significant role in the determination and delivery of the client's medical care; and~~]

[~~(2) is synonymous with "attending physician," as defined in 42 CFR §418.3.~~]

(g) A hospice agency must ensure each client's hospice election statement includes: [~~For the purposes of this subchapter, election of hospice care occurs on the effective date included in a client's hospice election statement. A hospice election statement must include:~~]

(1) identification of the hospice that will provide care to the client;

(2) the client's or the client's legal representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the client's terminal illness[~~, as well as the potential availability of supportive palliative care options outside a hospice setting~~];

(3) acknowledgement by Medicare beneficiaries that certain Medicare services, as described in 42 CFR §418.24(d), are waived by the hospice election;

(4) the effective date of the election of hospice care, which may be later but not earlier than the date of the client's or the client's legal representative's signature and may be the first day of hospice care or a later date; and

(5) the signature of the client or legal representative.

(h) For the purposes of this subchapter, the term "comprehensive assessment" means a thorough evaluation of a client's physical, psychosocial, emotional, and spiritual status related to the terminal illness and related conditions. This includes a thorough evaluation of the caregiver's and family's willingness and capability to care for the client.

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DIVISION 2. INITIAL AND COMPREHENSIVE ASSESSMENT OF A HOSPICE

26 TAC §558.812

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendment affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.812. Update of the Hospice Comprehensive Assessment.

(a) The hospice interdisciplinary team, in collaboration with a client's attending practitioner, if any, must update the client's comprehensive assessment as frequently as the condition of the client requires, but no less than every 15 days.

(b) The hospice interdisciplinary team may meet in-person or virtually if the team can successfully update the comprehensive assessment through a virtual meeting.

(c) [~~(b)~~] The update of the comprehensive assessment must include:

(1) changes that have taken place since the initial assessment;

(2) information on the client's progress toward desired outcomes; and

(3) a reassessment of the client's response to care.

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DIVISION 3. HOSPICE INTERDISCIPLINARY TEAM, CARE PLANNING, AND COORDINATION OF SERVICES

26 TAC §558.823

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendment affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.823. Coordination of Services by the Hospice.

In addition to the requirements in §558.288 of this chapter (relating to Coordination of Services), a hospice must develop and maintain a system of communication and integration, which may include teleservices, in accordance with its written policy on coordination of services. The policy must:

(1) ensure that the interdisciplinary team maintains responsibility for directing, coordinating, and supervising the care and services provided to a client;

(2) provide for and ensure the ongoing sharing of information between all hospice personnel providing care and services in all settings, whether the care and services are provided directly or under contract; and

(3) provide for an ongoing sharing of information with other non-hospice healthcare [~~health care~~] providers furnishing services unrelated to the terminal illness and related conditions.

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DIVISION 4. HOSPICE CORE SERVICES

26 TAC §558.834

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendment affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.834. Hospice Counseling Services.

(a) Counseling services must be available to a client and family to assist the client and family in minimizing the stress and problems that arise from the terminal illness, related conditions, and the dying process.

(b) Counseling services must include bereavement, dietary, and spiritual counseling.

(1) Bereavement counseling. Bereavement counseling means emotional, psychosocial, and spiritual support and services provided before and after the death of the client to assist with issues related to grief, loss, and adjustment. A hospice must have an organized program for the provision of bereavement services furnished under the supervision of a qualified professional with experience or education in grief or loss counseling. A hospice must:

(A) develop a bereavement plan of care that notes the kind of bereavement services to be offered to the client's family and other persons and the frequency of service delivery;

(B) make bereavement services available to a client's family and other persons in the bereavement plan of care for up to one year following the death of the client;

(C) extend bereavement counseling to residents of a skilled nursing facility, a nursing facility, or an intermediate care facility for individuals with an intellectual disability or related conditions when appropriate and as identified in the bereavement plan of care; and

(D) ensure that bereavement services reflect the needs of the bereaved.

(2) Dietary counseling. Dietary counseling means education and interventions provided to a client and family regarding appropriate nutritional intake as a hospice client's condition progresses. Dietary counseling, when identified in the plan of care, must be performed by a qualified person. A qualified person includes a dietitian, nutritionist, or RN. A person that provides dietary counseling must be [~~appropriately~~] trained and qualified to address and assure that the specific dietary needs of a client are met.

(3) Spiritual counseling. A hospice must provide spiritual counseling that meets the client's and the client's family's spiritual needs in accordance with their acceptance of this service and in a manner consistent with their beliefs and desires. A hospice must:

(A) provide an assessment of the client's and family's spiritual needs;

(B) make all reasonable efforts to the best of the hospice's ability to facilitate visits by local clergy, a pastoral counselor, or other persons who can support a client's spiritual needs; and

(C) advise the client and family of the availability of spiritual counseling services.

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DIVISION 5. HOSPICE NON-CORE SERVICES

26 TAC §558.843

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendment affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.843. Hospice Aide Qualifications.

(a) A hospice must use a qualified hospice aide to provide hospice aide services. A qualified hospice aide is a person who has successfully completed:

(1) a training program and competency evaluation program that complies with the requirements in subsections (c) and (d) of this section; or

(2) a competency evaluation program that complies with the requirements in subsection (d) of this section.

(b) A person who has not provided home health or hospice aide services for compensation in an agency during the most recent continuous period of 24 consecutive months must successfully complete the programs described in subsection (a)(1) of this section or the program described in subsection (a)(2) of this section before providing hospice aide services.

(c) A hospice aide training program must address each of the subject areas listed in paragraph (1) of this subsection through class-

room and supervised practical training totaling at least 75 hours. At least 16 hours must be devoted to supervised practical training. At least 16 hours of classroom training must be completed before the supervised practical training begins.

(1) Subject areas that must be addressed in a hospice aide training program include:

(A) communication skills, including the ability to read, write, and verbally report clinical information to clients, caregivers, and other hospice staff;

(B) observation, reporting, and documentation of a client's status and the care or service provided;

(C) reading and recording temperature, pulse, and respiration;

(D) basic infection control procedures;

(E) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(F) maintenance of a clean, safe, and healthy environment;

(G) recognizing emergencies and the knowledge of emergency procedures and their application;

(H) the physical, emotional, and developmental needs of and ways to work with the populations served by the hospice, including the need for respect for a client and his or her privacy and property;

(I) appropriate and safe techniques for performing personal hygiene and grooming tasks, including:

(i) bed bath;

(ii) sponge, tub, and shower bath;

(iii) hair shampoo in sink, tub, and bed;

(iv) nail and skin care;

(v) oral hygiene; and

(vi) toileting and elimination;

(J) safe transfer techniques and ambulation;

(K) normal range of motion and positioning;

(L) adequate nutrition and fluid intake; and

(M) other tasks that the hospice may choose to have an aide perform. The hospice must train hospice aides, as needed, for skills not listed in subparagraph (I) of this paragraph.

(2) The classroom training of hospice aides and the supervision of hospice aides during supervised practical training must be conducted by or under the general supervision of an RN who possesses a minimum of two years of nursing experience, at least one of which must be in the provision of home health or hospice care. Other persons, such as a physical therapist, occupational therapist, medical social worker, and speech-language pathologist may be used to provide instruction under the supervision of a qualified RN who maintains overall responsibility for the training.

(3) An agency must maintain documentation that demonstrates that its hospice aide training program meets the requirements in this subsection. Documentation must include a description of how additional skills, beyond the basic skills listed in paragraph (1) of this subsection, are taught and tested if the agency requires a hospice aide to perform more complex tasks.

(d) A hospice aide competency evaluation program must address each of the subject areas listed in paragraphs (2) and (3) of this subsection.

(1) An RN, in consultation with the other persons described in subsection (c)(2) of this section, must perform the competency evaluation.

(2) The RN must observe and evaluate the hospice aide's performance of tasks with a client in the following areas:

(A) communication skills, including the ability to read, write, and verbally report clinical information to clients, caregivers, and other hospice staff;

(B) reading and recording temperature, pulse, and respiration;

(C) appropriate and safe techniques for performing personal hygiene and grooming tasks, including:

(i) bed bath;

(ii) sponge, tub, and shower bath;

(iii) hair shampoo in sink, tub, and bed;

(iv) nail and skin care;

(v) oral hygiene; and

(vi) toileting and elimination;

(D) safe transfer techniques and ambulation; and

(E) normal range of motion and positioning.

(3) The RN must evaluate a hospice aide's performance of each of the tasks listed in this paragraph by requiring the aide to submit to a written examination, an oral examination, or by observing the hospice aide's performance with a client. The tasks must include:

(A) observing, reporting, and documenting client status and the care or service provided;

(B) basic infection control procedures;

(C) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(D) maintaining a clean, safe, and healthy environment;

(E) recognizing emergencies and knowing emergency procedures and their application;

(F) the physical, emotional, and developmental needs of and ways to work with the populations served by the hospice, including the need for respect for a client and his or her privacy and property;

(G) adequate nutrition and fluid intake; and

(H) other tasks the hospice may choose to have the hospice aide perform. The hospice must evaluate the competency of a hospice aide, as needed, for skills not listed in paragraph (2)(C) of this subsection.

(4) A hospice aide has not successfully completed a competency evaluation program if the aide has an unsatisfactory rating in more than one subject area listed in paragraphs (2) and (3) of this subsection.

(5) If a hospice aide receives an unsatisfactory rating in any of the subject areas listed in paragraphs (2) and (3) of this subsection, the aide must not perform that task without direct supervision by an RN until after:

(A) the aide receives training in the task for which the aide was evaluated as unsatisfactory; and

(B) successfully completes a subsequent competency evaluation with a satisfactory rating on the task.

(6) An agency must maintain documentation that its hospice aide competency evaluation program meets the requirements in this subsection. The agency's documentation of a hospice aide's competency evaluation must demonstrate the aide's competency to provide services to a client that exceed the basic skills taught and tested before the aide is assigned to care for a client who requires more complex services.

(e) A hospice aide must receive at least 12 hours of in-service training during each 12-month period. The agency may provide the 12 hours of in-service training during the 12-month calendar year, or within 12 months after a hospice aide's employment or contract anniversary date.

(1) The in-service training must be supervised by an RN.

(2) An agency may provide hospice aide in-service training supervised by an RN while the aide is providing care to a client or by using a pseudo-person. The RN must document the exact new skill or theory taught in the client's residence and the duration of the training. The in-service training provided in a client's residence must not be a repetition of a hospice aide's competency in a basic skill.

(3) An agency must maintain documentation that demonstrates the agency meets the hospice aide in-service training requirements in this subsection.

(f) An agency that hires or contracts to use a hospice aide who completes a training program and competency evaluation program, or a competency evaluation program provided by another agency or a person who is not licensed as an agency must ensure that the programs or program completed comply with the requirements in subsections [~~subsection~~] (c) and (d) of this section.

(g) A Medicare-certified hospice agency must also comply with 42 CFR §418.76(b) and 42 CFR §418.76(f).

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DIVISION 6. HOSPICE ORGANIZATION AND ADMINISTRATION OF SERVICES

26 TAC §§558.857, 558.859, 558.861 - 558.863

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendments affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.857. Hospice Staff Training.

In addition to the requirements in §558.245 of this chapter (relating to Staffing Policies), a hospice must:

(1) provide orientation to all volunteers, employees, and contracted staff who have client and family direct contact about:

(A) the hospice philosophy[~~, and about supportive palliative care, to all employees and contracted staff who have client and family contact~~];

(B) education on the differences between supportive palliative care provided as part of home health services and the hospice care service model;

(2) provide an initial orientation for an employee that addresses the employee's specific job duties;

(3) assess the skills and competence of all persons furnishing care, including volunteers furnishing services, and, as necessary, provide in-service training and education programs where required;

(4) have written policies and procedures describing its methods for assessing competency; and

(5) maintain a written description of the in-service training provided during the previous 12 months.

§558.859. Hospice Discharge or Transfer of Care.

(a) If a hospice transfers the care of a client to another facility or agency, the hospice must provide a copy of the hospice discharge summary and, if requested, a copy of the client's record to the receiving facility or agency.

(b) If a client revokes the election of hospice care or is discharged by the hospice for any reason listed in subsection (d) of this section, the hospice must provide a copy of the hospice discharge summary and, if requested, a copy of the client's record to the client's attending practitioner.

(c) A hospice discharge summary must include:

(1) a summary of the client's stay, including treatments, symptoms, and pain management;

(2) the client's current plan of care;

(3) the client's latest practitioner [~~physician~~] orders; and

(4) any other documentation needed to assist in post-discharge continuity of care or that is requested by the attending practitioner or receiving facility or agency.

(d) In addition to the requirements in §558.295 of this chapter (relating to Client Transfer or Discharge Notification Requirements), a hospice may discharge a client if:

(1) the client moves out of the hospice's service area or transfers to another hospice;

(2) the hospice determines that the client is no longer terminally ill; or

(3) the hospice determines, under a policy set by the hospice for addressing discharge for cause, that the behavior of the client or other person in the client's home is disruptive, abusive, or uncooperative to the extent that delivery of care to the client or the ability of the hospice to operate effectively is seriously impaired.

(e) Before a hospice seeks to discharge a client for cause, the hospice must:

(1) advise the client that a discharge for cause is being considered;

(2) make a reasonable effort to resolve the problems presented by the client's behavior or situation;

(3) document in the client's record the problems and efforts made by the hospice to resolve the problems; and

(4) ascertain that the client's proposed discharge is not due to the client's use of necessary hospice services.

(f) Before discharging a client for any reason listed in subsection (d) of this section, the hospice must obtain a written practitioner's or physician's discharge order from the hospice medical director. If the client has an attending practitioner involved in the client's care, the attending practitioner should be consulted before discharge and the attending practitioner's review and decision should be included in the discharge note.

(g) A hospice must have a discharge planning process that addresses the possibility that a client's condition might stabilize or otherwise change such that the client cannot continue to be certified as terminally ill. A client's discharge planning must include any necessary family counseling, client education or other services before the hospice discharges the client based on a decision by the hospice medical director or practitioner [~~physician~~] designee that the client is no longer terminally ill.

§558.861. Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in a Client's Home or Community Setting.

(a) While a client is under hospice care, a hospice must provide drugs and biologicals related to the palliation and management of the terminal illness and related conditions, as identified in the hospice plan of care.

(b) A hospice must ensure that the interdisciplinary team (IDT) confers with a person with education and training in drug management, as defined in hospice policies and procedures and state [~~State~~] law, who is an employee of or under contract with the hospice to ensure that drugs and biologicals meet a client's needs. The hospice must be able to demonstrate that the person has specific education and training in drug management. Persons with education and training in drug management include:

(1) a licensed pharmacist, a physician who is board certified in hospice and palliative medicine, or an RN who is certified in palliative nursing; or

(2) a physician, an RN, [~~or~~] an advanced practice nurse, or a physician assistant who completes a specific drug management course for hospice or palliation.

(c) Only a physician, [~~or~~] an advanced practice nurse, or a physician assistant, in accordance with the plan of care, may order drugs for a client.

(d) If the drug order is verbal or given by or through electronic transmission:

(1) the drug order [~~it~~] must be given only to an appropriate [~~a~~] licensed [~~nurse,~~] pharmacist[~~,~~] or practitioner [~~physician~~]; and

(2) the person receiving the order must record and sign the order [~~it~~] immediately and have the prescribing person sign the order [~~it~~] in accordance with the agency's policies and applicable state [~~State~~] and federal regulations.

(e) A hospice must obtain drugs and biologicals from community or institutional pharmacists or stock drugs and biologicals itself. A hospice that dispenses, stores, and transports drugs must do so in accordance with federal, state [~~State~~], and local laws and regulations, as well as the hospice's own policies and procedures. A hospice that operates its own pharmacy must comply with the Texas Occupations Code Chapter 551, [~~, Subtitle J,~~] and applicable pharmacy and pharmacists' regulations adopted by the Texas Board of Pharmacy under that subtitle.

(f) The IDT, as part of the review of the plan of care, must determine the ability of the client or the client's family to safely administer drugs and biologicals to the client in the client's home.

(g) Drugs and biologicals must be labeled in accordance with currently accepted professional practice and must include appropriate usage and cautionary instructions, as well as an expiration date, if applicable.

(h) A hospice must have written policies and procedures for the safe use and storage of drugs and biologicals in a client's home.

(i) A hospice must have written policies and procedures that address management of controlled substance prescription drugs in a client's home, including:

(1) at the time when controlled substance prescription drugs are first ordered;

(2) when controlled substance prescription drugs are discontinued;

(3) when a new controlled substance prescription drug is ordered; and

(4) when the client dies.

(j) At the time when controlled substance prescription drugs are first ordered for use in a client's home, the hospice must:

(1) provide a copy of the hospice's written policies and procedures on the management of controlled substance prescription drugs in a client's home to the client or the LAR [~~client representative~~] and family;

(2) discuss the hospice policies and procedures for managing the safe use of controlled substance prescription drugs with the client or the LAR and the family in a language and manner that the client or the LAR and the family [~~they~~] understand, to ensure that these parties are educated regarding the safe use, storage, and disposal of controlled substance prescription drugs in the client's home; and

(3) document in the client record that the hospice provided and discussed its written policies and procedures for managing the safe use and storage of controlled substance prescription drugs in the client's home, as described in subsection (m) of this section.

(k) A hospice must have a written policy describing whether the agency will dispose of a client's unused controlled substance prescription drugs on the client's death or in other circumstances in which disposal is appropriate, as described in subsection (m) of this section.

(l) If a hospice agency's policy under subsection (k) of this section provides that the agency will dispose of a client's unused controlled substance prescription drugs as described in that subsection, the written policies and procedures which the hospice must implement and enforce, must:

(1) identify disposal methods that are consistent with recommendations by the United States Food and Drug Administration and the laws of the State of Texas;

(2) permit disposal described in subsection (k) of this section only by a hospice employee or contractor who is a healthcare [~~health care~~] practitioner licensed to perform medical or nursing services who meets the conditions of this section;

(3) require each healthcare [~~health care~~] practitioner responsible for disposal of an unused controlled substance of a client under this section to receive training regarding the secure and responsible disposal of controlled substance prescription drugs in accordance with paragraph (1) of this subsection and in a manner that discourages abuse, misuse, or diversion;

(4) require that hospice agency staff:

(A) provide a copy of the disposal policies and procedures to a licensed facility in which the client is residing or receiving short-term in-patient hospice services;

(B) provide a copy of the disposal policies and procedures to the client or [~~and the~~] client's LAR [~~family~~];

(C) discuss the policies and procedures with the client or client's LAR [~~patient~~] and the client's family in a language and manner the client or the client's LAR and client's family understand;

(D) document in the client's clinical record that the policies and procedures were provided and discussed as required by subsections (b) and (c) of this section; and

(E) document the client's or LAR's agreement to the disposal of the client's unused controlled substance prescription drugs under circumstances described in subsection (m) of this section by a qualified health practitioner employed or contracted by the agency; and

(5) otherwise comply with state, federal, and local laws applicable to the disposal of drugs and biologicals in a facility.

(m) A healthcare [~~health care~~] practitioner qualified under subsection (l) of this section may confiscate and dispose of a client's unused controlled substance prescription drug if:

(1) the client has died;

(2) the drug has expired; or

(3) the client's prescribing practitioner [~~physician~~] has given written instructions that the client [~~patient~~] should no longer use the drug.

(n) A hospice agency may not dispose of controlled prescription drugs not prescribed to the client.

(o) A healthcare [~~health care~~] practitioner qualified under subsection (l) of this section, confiscating the controlled substance prescription drug, must dispose of the drug in a manner consistent with recommendations of the United States Food and Drug Administration and the laws of the State of Texas.

(p) A healthcare [~~health care~~] practitioner qualified under subsection (l) of this section must dispose of a client's unused controlled substance prescription drugs as described in this section only at the location at which practitioner confiscated the drug.

(q) A healthcare [~~health care~~] practitioner disposal of a client's unused controlled substance prescription drugs as described in this section must be witnessed by another person 18 years of age or older. The witness does not have to be a hospice employee.

(r) After disposing of a [~~the~~] client's unused controlled substance prescription drug, the healthcare practitioner must document the following information in the client's record [~~the health care practitioner shall document in the client's record~~]:

(1) the name of the drug;

(2) the dosage of the drug the client was receiving;

(3) the route of controlled substance prescription drug administration;

(4) the quantity of the controlled substance prescription drug originally dispensed and the quantity of the drug remaining;

(5) the time, date, and manner of disposal; and

(6) name and relationship of the witness to the client.

(s) A healthcare [~~health care~~] practitioner shall document in the client's file if a family member of the client prevented the confiscation and disposal of a controlled substance prescription drug authorized under this section.

(t) If an employee of a licensed facility where a client is receiving in-patient hospice services prevents the confiscation and disposal of a controlled substance prescription drug authorized under this section, the healthcare practitioner must document this action in the client's file. [~~A health care practitioner shall document in the client's file if an employee of a licensed facility where the client is receiving in-patient hospice services prevented the confiscation and disposal of a controlled substance prescription drug otherwise authorized under this section.~~]

§558.862. Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in an Inpatient Hospice Unit.

(a) The requirements stated in §558.861(a)-(g) of this division (relating to Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in a Client's Home or Community Setting) also apply to a hospice that provides inpatient care directly in its own inpatient unit.

(b) A hospice that provides inpatient care directly in its own inpatient unit must provide pharmaceutical services under the direction of a qualified licensed pharmacist who is an employee of or under contract with the hospice. The services provided by the pharmacist must include evaluation of a client's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.

(c) A hospice that provides inpatient care directly in its own inpatient unit must:

(1) have a written policy in place that promotes dispensing accuracy; and

(2) maintain current and accurate records of the receipt and disposition of all controlled drugs.

(d) Clients receiving care in an [~~a hospice~~] inpatient unit may only be administered medications by the following persons:

(1) a licensed nurse, practitioner, [~~physician,~~] or other healthcare [~~health care~~] professional in accordance with their scope of practice and state [~~State~~] law;

(2) a home health medication aide; or

(3) a client, upon approval by the interdisciplinary team.

(e) A hospice that provides inpatient care directly in its own inpatient unit must comply with the following additional requirements.

(1) All drugs and biologicals must be stored in secure areas. All controlled drugs listed in Schedules II, III, IV, and V, established under 21 United States Code §812, must be stored in locked compartments within such secure storage areas. Only personnel authorized to administer controlled drugs as noted in subsection (i) of this section may have access to the locked compartments.

(2) Discrepancies in the acquisition, storage, dispensing, administration, disposal, or return of controlled drugs must be investigated immediately by the pharmacist and hospice administrator and reported, without limitation, to the United States Department of Justice, Drug Enforcement Administration, Diversion Control Division. A hospice must maintain a written account of its investigation and make the investigation [~~it~~] available to state [~~State~~] and federal officials if requested.

(f) A hospice that provides inpatient care directly in its own inpatient unit must dispose of controlled drugs in compliance with the hospice's policy and in accordance with state [~~State~~] and federal requirements, including Texas Health and Safety Code Chapter 481. The hospice must maintain current and accurate records of the receipt and disposition of all controlled drugs.

§558.863. Hospice Short-term Inpatient Care.

(a) A hospice must make inpatient care available when needed for pain control, symptom management, and respite purposes.

(b) A hospice must ensure that inpatient care for pain control and symptom management is provided in either:

(1) an [~~a hospice~~] inpatient unit that meets the additional standards in Division 7 of this subchapter (relating to [~~Hospice~~] Inpatient Units) and the Medicare Conditions of Participation for providing inpatient care directly as specified in 42 CFR §418.110; or

(2) a Medicare-certified hospital or skilled nursing facility that also meets:

(A) the licensing standards specified in §558.870(b)(1) and (2) of this subchapter (relating to Staffing in an [~~a Hospice~~] Inpatient Unit) regarding 24-hour nursing services, and in Division 9 [~~§558.871(d)(1)-(4)~~] of this subchapter (relating to Physical Environment in an [~~a Hospice~~] Inpatient Unit); and

(B) the federal Medicare standards specified in 42 CFR §418.110(b) and (e) regarding 24-hour nursing services and patient areas.

(c) A hospice must ensure that inpatient care for respite purposes is provided either by:

(1) a facility specified in subsection (b)(1) or (2) of this section; or

(2) a Medicare-certified or Medicaid-certified nursing facility that also meets the licensing standards specified in Division 9 [~~§558.871(d)(1)-(4)~~] of this subchapter regarding client areas and the federal Medicare standards specified in 42 CFR §418.110(e) regarding patient areas.

(d) A facility providing respite care must provide 24-hour nursing services that meet the nursing needs of all clients and are furnished in accordance with each client's plan of care. Each client must receive all nursing services as prescribed and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(e) In addition to the requirements in §558.289(b) of this chapter (relating to Independent Contractors and Arranged Services), if a hospice has an agreement with a facility to provide for inpatient care, there must be a written contract coordinated by the hospice that specifies that:

(1) the hospice supplies the facility with a copy of the client's plan of care and specifies the inpatient services to be furnished;

(2) the facility has established client care policies consistent with those of the hospice and agrees to abide by the plan of care established by the hospice for each client and to follow the hospice agency's protocols for supporting optimal quality of life for its clients;

(3) the facility's clinical record for a hospice client includes documentation of all inpatient services furnished and events regarding care that occurred at the facility;

(4) a copy of the discharge summary be provided to the hospice at the time of discharge;

(5) a copy of the inpatient clinical record is available to the hospice at the time of discharge;

(6) the facility has identified a person within the facility who is responsible for the implementation of the provisions of the agreement;

(7) the hospice retains responsibility for ensuring that the training of personnel who will be providing the client's care in the facility has been provided and that a description of the training and the names of those giving the training are documented; and

(8) a method for verifying that the requirements in paragraphs (1) - (7) of this subsection are met.

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

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Karen Ray
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DIVISION 7. HOSPICE INPATIENT UNITS

26 TAC §558.871

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The repeal affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.871. Physical Environment in a Hospice Inpatient Unit.

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

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26 TAC §558.870

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendment affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.870. Staffing in an [a ~~Hospice~~] Inpatient Unit.

(a) A hospice is responsible for staffing its inpatient unit with the numbers and types of qualified, trained, and experienced staff to meet the care needs of every client in the inpatient unit to ensure that plan of care outcomes are achieved and negative outcomes are avoided.

(b) An [~~A hospice~~] inpatient unit must provide 24-hour nursing services that meet the nursing needs of all clients and are furnished in accordance with each client's plan of care.

(1) A client must receive all nursing services as prescribed in the plan of care and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(2) If at least one client in the [~~hospice~~] inpatient unit is receiving general inpatient care for pain control or symptom management, then each shift must include an RN who provides direct client care.

(3) An [~~A hospice~~] inpatient unit must have a nurse call system. The hospice must install in a client's room a system that:

(A) is equipped with an easily activated, functioning device accessible to the client; and

(B) allows the client to call for assistance from a staff person on the unit.

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

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DIVISION 8. HOSPICES THAT PROVIDE HOSPICE CARE TO RESIDENTS OF A SKILLED NURSING FACILITY, NURSING FACILITY, OR INTERMEDIATE CARE FACILITY FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

26 TAC §558.880

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The amendment affects Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.880. Providing Hospice Care to a Resident of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions.

(a) Professional management. A hospice must assume responsibility for professional management of the hospice services it provides to a resident of a skilled nursing facility (SNF), nursing facility (NF), or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), in accordance with the hospice plan of care. The hospice must make arrangements, as necessary for hospice-related inpatient care in a participating Medicare or Medicaid facility, in accordance with §558.850 of this subchapter (relating to Organization and Administration of Hospice Services) and §558.863 of this subchapter (relating to Hospice Short-term Inpatient Care).

(b) Written contract. A hospice and SNF, NF, or ICF/IID must have a written contract that allows the hospice to provide services in the facility. The contract must be signed by an authorized representative of the hospice and the SNF, NF, or ICF/IID before hospice services are provided. In addition to the requirements in §558.289 of this chapter (relating to Independent Contractors and Arranged Services), the written contract must include:

(1) the way the SNF, NF, or ICF/IID and the hospice are to communicate with each other and document such communications to ensure that the needs of a client are addressed and met 24 hours a day;

(2) a provision that the SNF, NF, or ICF/IID immediately notifies the hospice of:

(A) a significant change in the client's physical, mental, social, or emotional status;

(B) clinical complications that suggest a need to alter the plan of care;

(C) the need to transfer the client from the SNF, NF, or ICF/IID; or

(D) the death of a client;

(3) a provision stating that if the SNF, NF, or ICF/IID transfers the client from the facility that the hospice arranges for, and remains responsible for, any necessary continuous care or inpatient care related to the terminal illness and related conditions;

(4) a provision stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided;

(5) an agreement that the SNF, NF, or ICF/IID is responsible for furnishing 24-hour room and board care, meeting the personal care and nursing needs that would have been provided by the primary caregiver at home at the same level of care provided before the client elected hospice care;

(6) an agreement that the hospice is responsible for providing services at the same level and to the same extent as those services would be provided if the SNF, NF, or ICF/IID resident were in the resident's [~~his or her~~] own home;

(7) a delineation of the hospice's responsibilities, which include providing medical direction and management of the client; nursing; counseling, including spiritual, dietary and bereavement counseling; social work; medical supplies, durable medical equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions;

(8) a provision that the hospice may use the SNF, NF, or ICF/IID nursing personnel where permitted by state [~~State~~] law and as specified by the SNF, NF, or ICF/IID to assist in the administration of prescribed therapies included in the plan of care, only to the extent that the hospice would routinely use the services of a hospice client's family in implementing the plan of care;

(9) a provision stating that the hospice must report an alleged violation involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of client property by non-hospice personnel to the SNF, NF, or ICF/IID administrator within 24 hours after the hospice becomes aware of the alleged violation;

(10) a delineation of the responsibilities of the hospice and the SNF, NF, or ICF/IID to provide bereavement services to SNF, NF, or ICF/IID staff; and

(11) a provision regarding management and disposal, in compliance with applicable law, of drugs, including controlled substance prescription drugs and biologicals.

(c) Hospice plan of care. In accordance with §558.821 of this subchapter (relating to Hospice Plan of Care), a written hospice plan of care must be established and maintained in consultation with SNF, NF, or ICF/IID representatives. Hospice care must be provided in accordance with the hospice plan of care.

(1) A hospice plan of care must identify the care and services needed to care for the client and specifically identify which provider is responsible for performing the respective functions that have been agreed upon and included in the hospice plan of care.

(2) A hospice plan of care must reflect the participation of the hospice, representatives of the SNF, NF, or ICF/IID, and the client and the LAR [~~family~~] to the extent possible.

(3) Any changes in the hospice plan of care must be discussed with the client or the [~~client's~~] LAR, and SNF, NF, or ICF/IID representatives, and must be approved by the hospice before implementation.

(d) Coordination of services. In addition to the requirements in §558.288 of this chapter (relating to Coordination of Services) and §558.823 of this subchapter (relating to Coordination of Services by the Hospice), a hospice must:

(1) designate a member of each interdisciplinary team (IDT) that is responsible for a client who is a resident of a SNF, NF, or ICF/IID who is responsible for:

(A) providing overall coordination of the hospice care of the SNF, NF, or ICF/IID resident with SNF, NF, or ICF/IID representatives; and

(B) communicating with SNF, NF, or ICF/IID representatives and other healthcare [~~health care~~] providers participating in the provision of care for the terminal illness and related conditions and other conditions to ensure quality of care for the client and family; and

(2) ensure that the hospice IDT communicates with the SNF, NF, or ICF/IID medical director, the client's attending practitioner, and other physicians participating in the provision of care to the client as needed to coordinate hospice care with medical care provided by other physicians; and

(3) provide the SNF, NF, or ICF/IID with:

(A) the most recent hospice plan of care specific to the client;

(B) the hospice election form and any advance directives specific to the client;

(C) physician's [~~physician~~] certification and recertification of the terminal illness specific to the client;

(D) names and contact information for hospice personnel involved in hospice care of the client;

(E) instructions on how to access the hospice's 24-hour on-call system;

(F) hospice medication information specific to the client; and

(G) hospice physician and, if any, attending practitioner orders specific to the client.

(e) Orientation and training of staff. Hospice personnel must ensure that SNF, NF or ICF/IID staff who provide care to the hospice's clients have been oriented and trained in the hospice philosophy, including the hospice's policies and procedures regarding methods of comfort, pain control, and symptom management, as well as principles about death and dying, how a person may respond to death, the hospice's client rights, the hospice's forms, and the hospice's record keeping requirements.

(f) Management and disposal of drugs and biologicals. The policies and procedures of the hospice may not impede the SNF, NF, or ICF/IID from adhering to state, federal, and local law applicable to the disposal of drugs and biologicals in a facility.

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

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DIVISION 9. PHYSICAL ENVIRONMENT IN AN INPATIENT UNIT

26 TAC §§558.914, 558.916, 558.918, 558.928, 558.930, 558.932, 558.936, 558.940, 558.942, 558.944, 558.946, 558.948, 558.950

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011(b) and §142.012(a) which authorize the executive commissioner of HHSC to adopt rules relating to the quality of care and life of agency clients and that are necessary to implement Texas Health and Safety Code Chapter 142; and Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404, that require HHSC to adopt rules governing the investigations of ANE.

The new sections affect Texas Government Code §524.0151; Texas Health and Safety Code Chapter 142; Texas Human Resources Code Chapter 48, Subchapter F; and Texas Family Code §261.404.

§558.914. Safety Management.

(a) An inpatient unit must ensure that the physical environment is safe and does not contain hazards for clients, staff, and visitors. The hospice agency must identify and address any actual or possible dangers to the health and safety of the clients, others, and property.

(b) In addition to requirements in §558.256 of this chapter (relating to Emergency Preparedness Planning and Implementation), a hospice agency must have a written disaster preparedness plan. The plan must cover paragraphs (1) - (7) of this subsection in an inpatient unit. The hospice agency must keep records showing compliance with this subsection.

(1) Direction and control. The plan must:

(A) designate by position, a person responsible for implementing the emergency response plan, as well as at least one alternate, with authority to carry out evacuation or shelter in place procedures;

(B) include procedures for:

(i) maintaining uninterrupted leadership and authority in essential positions during an emergency;

(ii) meeting staffing requirements during emergencies;

(iii) maintaining a current list of entities to be notified when warning of a disaster is received;

(iv) alerting critical unit personnel when a disaster is identified; and

(v) maintaining a current 24-hour contact list for all personnel;

(C) establish procedures for:

(i) timely activations of the emergency response plan based on disaster types identified in the risk assessment; and

(ii) warning and notifying unit staff about internal and external disasters, including during off hours, weekends, and holidays;

(2) Communication. The plan must:

(A) establish procedures for:

(i) notifying staff, clients, families of clients, families of critical staff, prearranged receiving facilities, and other entities of an evacuation or the plan to shelter in place;

(ii) relocating and tracking clients during disasters that require mass evacuations; and

(iii) continuing communication, including steps to maintain contact with critical personnel and all vehicles in an evacuation caravan during an evacuation;

(B) maintain an accessible and current list of the telephone numbers for the following entities:

(i) client family members;

(ii) local shelters;

(iii) prearranged receiving facilities;

(iv) the local emergency management agencies;

(v) other healthcare providers; and

(vi) state and federal emergency management agencies; and

(C) provide contact numbers for family members to call for information.

(3) Resource management. The plan must:

(A) establish procedures to maintain contracts and agreements with vendors as needed to ensure that supplies and transportation required for sheltering in place or evacuation are available;

(B) develop and maintain accurate, detailed, and current checklists of essential supplies, staff, equipment, and medications;

(C) assign responsibility for completing the checklists during disaster operations;

(D) establish procedures for the safe and secure transportation of adequate amounts of food, water, medications, and critical supplies and equipment during an evacuation; and

(E) maintain a supply of resources sufficient for at least seven days to shelter in place. This supply must include:

(i) emergency power, including backup generators and arrangements to maintain a supply of fuel;

(ii) potable water in an amount based on population and location;

(iii) types and amounts of food suitable for the number and types of clients served;

(iv) extra pharmacy stocks of common medications; and

(v) extra medical supplies and equipment, such as oxygen, linens, and any other vital equipment.

(4) Sheltering in place. The plan must:

(A) establish procedures for:

(i) creating the criteria used to decide whether to shelter in place and or evacuate;

(ii) assessing the strength of the building for different types of possible disasters and identifying the safest areas within the building;

(iii) securing the building against damage during a disaster;

(iv) collaborating with local emergency management agencies when making a decision to shelter in place; and

(v) providing building security during sheltering in place;

(B) be developed using information about the building's construction and Life Safety Code (LSC) systems; and

(C) include procedures for:

(i) assigning each task in the sheltering plan to specific staff members; and

(ii) maintaining shelter in place operations for at least 24 hours per day for a minimum of seven days to ensure continuity of care for the number and types of clients served;

(5) Evacuation. The plan must:

(A) establish procedures for:

(i) maintaining contracts with prearranged receiving facilities; receiving facilities include a hospice inpatient unit, skilled nursing facility, nursing facility, or hospital; at least one receiving facility must be located at least 50 miles away;

(ii) identifying and following evacuation and alternative routes for transporting clients to a receiving facility; procedures must specify notification of proper authorities regarding the decision to evacuate;

(iii) protecting and transporting client records; procedures must ensure client records are matched to each client;

(iv) maintaining a checklist of items to be transported with clients, including medications and assistive devices; procedures must specify how items are matched to each client;

(v) accounting for all persons in the building during evacuation; procedures must track all persons evacuated;

(vi) using, protecting, and securing of identifying information used to identify evacuated clients;

(vii) specifying actions if a client becomes ill or dies during transport to a receiving facility;

(viii) making a hospice counselor available when unit staff accompanies clients during transport to a receiving unit or facility;

(ix) having staff determine when it is safe to return to the geographical area; and

(x) having staff determine if the building is safe for reoccupation;

(B) include:

(i) procedures for staff to ensure staff accompanies clients during transport to receiving facilities;

(ii) procedures to identify and assign staff responsibilities for client care during evacuation; procedures must include a backup plan for insufficient staff;

(iii) procedures to identify and assign staff responsibilities for client care during evacuation; procedures must include a backup plan for insufficient staff;

(iv) policy about whether family of unit staff and clients can shelter at the unit and evacuate with unit staff and clients; and

(v) procedures about coordinating building security with the local emergency management agencies; and

(C) ensure evacuation procedures are approved by the local emergency management coordinator (EMC) at least annually and when updated.

(6) Transportation. The plan must:

(A) specify procedures for arranging a sufficient number of vehicles to provide transportation that is suitable and safe for the type and number of clients served; and

(B) establish procedures for contacting the local EMC to coordinate transportation needs if prearranged transportation is unavailable due to circumstances beyond the unit's control.

(7) Training. The plan must:

(A) state when and how the disaster response plan is reviewed with clients and family members;

(B) describe how the role and responsibility of a client able to participate are reviewed;

(C) require initial and periodic training for all unit staff to implement the disaster response;

(D) specify how often disaster drills and demonstrations are conducted to ensure staff are fully trained regarding their duties under the disaster response plan; and

(E) establish procedures requiring emergency response drills at least once each year, conducted either during an actual disaster or as a planned drill. These drills may be separate from or combined with the drills required by National Fire Protection Association, Life Safety Code, 2012 edition (NFPA 101) under §558.918 of this division (relating to Fire Protection).

§558.916. Physical Plant and Equipment.

A hospice inpatient unit must develop procedures about:

(1) routine storage and prompt disposal of trash and medical waste;

(2) safe and reliable light levels, temperature, and ventilation throughout the hospice inpatient unit;

(3) emergency gas and water supply; and

(4) scheduled and emergency maintenance and repair of all equipment.

§558.918. Fire Protection.

(a) An inpatient unit must meet the applicable requirements of health care occupancy chapters in National Fire Protection Association, Life Safety Code, 2012 edition (NFPA 101). A hospice may not use the provisions applicable to limited care facilities.

(1) An inpatient unit initially licensed before the original effective date of this rule, and continually operated under a hospice license without interruption since then, is considered an existing hospice inpatient unit and must comply with NFPA 101, Chapter 19, Existing Health Care Occupancies.

(2) An inpatient unit initially licensed on or after the original effective date of this rule, or any new building or building addition to a currently licensed hospice constructed on or after the original effect date of this rule, is considered a new hospice inpatient unit and must comply with NFPA 101, Chapter 18, New Health Care Occupancies.

(3) An inpatient unit may not use Section 19.3.6.3.5 of NFPA 101, Chapter 19, Existing Health Care Occupancies.

(b) HHSC may recommend that CMS grant a waiver for specific requirements in NFPA 101. Such a waiver would only apply if strict enforcement would cause unreasonable hardship for the hospice and if the waiver does not negatively impact the health and safety of clients.

(c) An inpatient unit may place alcohol-based hand rub dispensers in the unit in accordance with the requirements of NFPA 101, Section 18.3.2.6 or Section 19.3.2.6, as applicable.

§558.928. Client Areas.

An inpatient unit must provide a home-like atmosphere and design client areas to protect the dignity, comfort, and privacy of clients. An inpatient unit must provide:

(1) physical space that allows private visiting for clients and family members;

(2) accommodations that allow family members to stay with the client through the night;

(3) physical space that allows family members privacy after a client's death; and

(4) opportunity for the client to receive visitors at any hour, including infants and small children.

§558.930. Client Rooms.

(a) An inpatient unit must ensure that each client room is designed and equipped to support nursing care and to maintain the dignity, comfort, and privacy of each client when possible. Each client's room must:

(1) be located at or above grade level;

(2) include a suitable bed and other appropriate furniture for the client;

(3) have closet space that provides security and privacy for clothing and personal belongings;

(4) accommodate no more than two clients and the family members of those clients; and

(5) provide a minimum of 80 square feet for each client in a double room and a minimum of 100 square feet for a client in a single room.

(b) Each client room in a hospice inpatient unit must have toilet and bathing facilities inside the room or located close to the room.

§558.932. Plumbing Facilities.

An inpatient unit must:

(1) maintain a continuous supply of hot water; and

(2) install plumbing fixtures equipped with control valves designed to automatically regulate hot water temperatures for client use.

§558.936. Infection Control.

A hospice agency must have an infection control program designed to prevent and control infections and communicable diseases, protecting clients, staff, and others as required by §558.853 of this subchapter (relating to Hospice Infection Control Program).

§558.940. Sanitary Environment.

(a) An inpatient unit must maintain a sanitary environment by following accepted standards of practice, including nationally recognized infection control precautions.

(b) Measures must be taken to prevent sources and transmission of infections and communicable diseases.

§558.942. Linen.

A hospice unit must:

(1) maintain a sufficient supply of clean linen for client use at all times; and

(2) handle, store, process, and transport linens in a way that prevents the spread of contaminants.

§558.944. Meal Service and Menu Planning.

A hospice inpatient unit must provide meals that meet the following requirements. Meals must:

(1) follow the client's plan of care, address nutritional needs, and comply with any prescribed therapeutic diet;

(2) be palatable, visually appealing, and be served at the correct temperature; and

(3) be obtained, stored, prepared, distributed, and served in sanitary conditions.

§558.946. Use of Restraint or Seclusion.

(a) A client in an inpatient unit has the right to be free from restraint or seclusion, of any form, that is used for purposes of coercion, discipline, convenience, or retaliation by unit staff. Restraint or seclusion may only be used to ensure the immediate physical safety of the client, a staff member, or others, and must be ended as soon as possible.

(b) Restraint or seclusion may only be used when less restrictive interventions are determined to be ineffective to protect the client, a staff member, or others from harm.

(c) The type or technique of restraint or seclusion used must be the least restrictive intervention that is effective to protect the client, a staff member, or others from harm.

(d) The use of restraint or seclusion must:

(1) comply with a written change to the client's plan of care; and

(2) be implemented following safe and appropriate restraint and seclusion techniques as set by hospice policy.

(e) Restraint or seclusion may only be used with an order from a physician or a practitioner who is authorized to order restraint or seclusion by hospice policy.

(f) An order for the use of restraint or seclusion must never be written as a standing order or on an as-needed basis.

(g) The medical director or physician designee must be consulted as soon as possible if the attending practitioner did not order the restraint or seclusion.

(h) An order for restraint or seclusion used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the client, a staff member, or others may only be renewed for up to a total of 24 hours in accordance with the following limits:

(1) four hours for adults 18 years of age or older;

(2) two hours for children and adolescents nine to 17 years of age; or

(3) one hour for children under nine years of age.

(i) After 24 hours, before writing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior, a physician or practitioner authorized to order restraint or seclusion by hospice policy must see and assess the client.

(j) Each order for restraint used to ensure the physical safety of a non-violent or non-self-destructive client may be renewed as authorized by hospice policy.

(k) Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.

(l) The condition of the client who is restrained or secluded must be monitored by a physician or attending practitioner who has completed the training criteria specified in subsection (m) of this section at an interval determined by hospice policy.

(m) Training requirements for a physician and an attending practitioner must be specified in hospice policy. At a minimum, a physician and an attending practitioner authorized to order restraint or seclusion by hospice policy must have a working knowledge of hospice policy regarding the use of restraint or seclusion.

(n) When restraint or seclusion is used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the client, a staff member, or others:

(1) the client must be evaluated in-person within one hour after the initiation of the intervention by a physician, an attending practitioner, or an RN who has been trained in accordance with the requirements specified in subsection (m) of this section; and

(2) the physician, attending practitioner, or RN must evaluate:

(A) the client's immediate situation;

(B) the client's reaction to the intervention;

(C) the client's medical and behavioral condition; and

(D) the need to continue or terminate the restraint or seclusion.

(o) If the in-person evaluation specified in subsection (n)(2) of this section is conducted by a trained RN, the trained RN must consult the medical director or physician designee as soon as possible after the completion of the one-hour in-person face-to-face evaluation.

(p) All requirements specified under this section are applicable to the simultaneous use of restraint and seclusion. Simultaneous restraint and seclusion are only permitted if the client is continually monitored:

(1) in-person by an assigned, trained staff member; or

(2) by trained staff using both video and audio equipment. This monitoring must be close to the client.

(q) When restraint or seclusion is used, there must be documentation in the client's record of:

(1) the one-hour in-person medical and behavioral evaluation if restraint or seclusion is used to manage violent or self-destructive behavior;

(2) a description of the client's behavior and the intervention used;

(3) alternatives or other less restrictive interventions attempted, if applicable;

(4) the client's condition or symptoms that warranted the use of the restraint or seclusion; and

(5) the client's response to the interventions used, including the rationale for continued use of the intervention.

§558.948. Restraint or Seclusion Staff Training Requirements.

(a) A client has the right to safe implementation of restraint or seclusion by trained staff.

(b) A hospice must ensure client care staff working in the inpatient unit are trained and able to demonstrate competency in application of restraints and implementation of seclusion, monitoring, assessment, and providing care for a client in restraint or seclusion:

(1) before participating in any of the actions specified in this subsection;

(2) as part of orientation; and

(3) subsequently on a periodic basis consistent with hospice policy.

(c) A hospice must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the client population in:

(1) techniques to identify staff and client behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion;

(2) the use of nonphysical intervention skills;

(3) choosing the least restrictive intervention based on an individualized assessment of the client's medical or behavioral status or condition;

(4) safe application and use of all types of restraint or seclusion used in the hospice, including training in how to recognize and respond to signs of physical and psychological distress (for example, positional asphyxia);

(5) clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;

(6) monitoring the physical and psychological well-being of a client who is restrained or secluded, including respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by hospice policy associated with the one-hour in-person evaluation; and

(7) the use of first-aid techniques and certification in the use of cardiopulmonary resuscitation, including required periodic re-certification.

(d) Persons providing staff training must be qualified as evidenced by education, training, and experience in techniques used to address a client's behaviors.

(e) A hospice agency must document in the staff personnel records that the training and demonstration of competency were successfully completed.

§558.950. Death Reporting Requirements Associated with Seclusion or Restraint in an Inpatient Unit.

(a) A hospice agency must report deaths associated with the use of seclusion or restraint in its inpatient unit.

(b) The hospice agency must report:

(1) an unexpected death that occurs while a client is in restraint or seclusion;

(2) an unexpected death that occurs within 24 hours after the client has been removed from restraint or seclusion; and

(3) a death known to the hospice that occurs within one week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to the client's death. The term "reasonable to assume" includes death related to restrictions of movement for prolonged periods of time or death related to chest compression, restriction of breathing, or asphyxiation.

(c) The hospice agency must report a death described in subsection (b) of this section to HHSC Complaint and Incident Intake using the online portal or by telephone at 1-800-458-9858 no later than 24 hours after acquiring knowledge of the client's death.

(d) The hospice agency must complete the HHSC Provider Investigation Report and submit via email or submit through the online portal to HHSC Complaint and Incident Intake within 10 days after reporting the death to HHSC by telephone.

(e) Hospice personnel must document in the client's record the date and time the death was reported to HHSC.

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

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Karen Ray
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CHAPTER 926. STATE FACILITY REQUIREMENTS TO ENHANCE THE SAFETY OF INDIVIDUALS RECEIVING SERVICES

SUBCHAPTER E. INPATIENT COMPETENCY RESTORATION

26 TAC §§926.201, 926.203, 926.205, 926.207, 926.209, 926.211

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §926.201, concerning Purpose; §926.203, concerning Application; §926.205, concerning Definitions; §926.207, concerning Standardized Competency Restoration Curriculum, §926.209, concerning Memorandum of Understanding, and §926.211, concerning Report to the Texas Health and Human Services Commission.

BACKGROUND AND PURPOSE

The proposal implements Senate Bill 528, 89th Legislature, Regular Session, 2025, which added Texas Health and Safety Code (HSC) Chapter 580, Inpatient Competency Restoration Services.

HSC Chapter 580 requires HHSC to establish rules requiring each facility that contracts with HHSC to provide inpatient competency restoration services to enter into a memorandum of understanding (MOU) to outline the powers and duties of competency restoration services. The MOU is between the facility, the county and municipality where the facility is located, and each local mental health authority or local behavioral health authority that operate in the county or municipality.

The proposal implements HSC §580.004 which requires each facility to report data to HHSC regarding individuals receiving inpatient competency restoration services.

In addition to the changes that implement HSC Chapter 580, the proposal also requires an HHSC contractor to use the Texas State Hospitals standardized competency restoration curriculum. Additionally, the contractor must require the subcontractor to use the Texas State Hospitals standardized competency restoration curriculum in providing inpatient competency restoration services.

SECTION-BY-SECTION SUMMARY

Proposed new §926.201 describes that the purpose of the subchapter is to set standards for inpatient competency restoration services.

Proposed new §926.203 states that the rules apply to a contractor with HHSC to provide inpatient competency restoration services to an individual.

Proposed new §926.205 defines terms used in the subchapter.

Proposed new §926.207 requires a contractor and their subcontractors to use the Texas State Hospitals standardized competency restoration curriculum. It also informs a contractor and a subcontractor how to access the curriculum.

Proposed new §926.209 identifies with whom a facility must enter into an MOU about inpatient competency restoration services. It also identifies the topics the MOU must include.

Proposed new §926.211 requires each facility to collect and submit specific data in the format and timeframe set by HHSC regarding individuals who received inpatient competency restoration services at the facility. It also requires that the facility report data separately for individuals charged with a misdemeanor offense and for individuals charged with a felony offense.

FISCAL NOTE

Victoria Grady, Deputy Chief, Finance, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new regulations;

(6) the proposed rules will not expand, limit, or repeal existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

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

Victoria Grady has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules do not apply to small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules: are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Kristy Carr, Associate Commissioner of State Hospitals, has determined that for each year of the first five years the rules are in effect, the public benefit will be increased public safety; improved communication between emergency services, law enforcement, and mental health providers; and improved outcomes for individuals in inpatient competency restoration programs.

Victoria Grady has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there are no new fees or costs imposed on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R039" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Health and Safety Code §580.003 and §580.004, which requires the executive commissioner of HHSC to promulgate rules related to the MOU and requires submission of inpatient competency restoration data to HHSC.

The new sections affect Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 580.

§926.201. Purpose.

This subchapter sets standards for inpatient competency restoration services that are paid for through a:

(1) contract with HHSC; or

(2) subcontract with an HHSC contractor to provide inpatient competency restoration.

§926.203. Application.

This subchapter applies to a contractor with HHSC to provide inpatient competency restoration services for an individual found incompetent to stand trial under Texas Code of Criminal Procedure Chapter 46B.

§926.205. Definitions.

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

(1) Calendar day--Any day, including weekends and holidays.

(2) CCP--Texas Code of Criminal Procedure.

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

(4) Competency restoration--As described in CCP Article 46B.001, the treatment or education process for restoring an individual's ability to consult with the individual's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the individual.

(5) Contractor--An entity that contracts with the Texas Health and Human Services Commission to provide inpatient competency restoration services for an individual found incompetent to stand trial under CCP Chapter 46B, including a local mental health authority, local behavioral health authority, university, facility, or county.

(6) Facility--A private psychiatric hospital as defined in Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) or a special or general hospital as defined in Chapter 505 of this title (relating to Hospital Licensing) that contracts with HHSC to provide inpatient competency restoration services.

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

(8) ICR--Inpatient competency restoration.

(9) Individual--A person receiving services under this subchapter.

(10) Inpatient mental health facility--A facility as defined in Texas Health and Safety Code §571.003.

(11) LBHA--Local behavioral health authority. An entity designated as an LBHA by HHSC under Texas Health and Safety Code §533.0356(a).

(12) LMHA--Local mental health authority. An entity designated as an LMHA by HHSC under Texas Health and Safety Code §533.035(a).

(13) Residential care facility--A facility defined in Texas Health and Safety Code §591.003.

§926.207. Standardized Competency Restoration Curriculum.

(a) A contractor must use the Texas State Hospitals standardized competency restoration curriculum. A contractor or subcontractor may request the curriculum from HHSC.

(b) A contractor must require the subcontractor to comply with this section.

§926.209. Memorandum of Understanding.

(a) A facility must enter into a memorandum of understanding (MOU) about inpatient competency restoration services with:

(1) the county and municipality where the facility is located; and

(2) each LMHA or LBHA that operates in the county or municipality.

(b) The MOU must outline the powers and duties of each party relating to inpatient competency restoration services. The topics outlined in the MOU must include:

(1) discharge planning, including:

(A) who is involved in the discharge process;

(B) who is notified of the discharge process;

(C) coordination with community providers;

(D) responsibility for continuity of care; and

(E) responsibility for discharge medications;

(2) court ordered medication, including which party is responsible for seeking, implementing, and monitoring any court-ordered medication;

(3) transportation, such as for medical appointments, court hearings, transfers between facilities, and discharge;

(4) sharing information as authorized under:

(A) Texas Health and Safety Code Chapters 181, 595, and 611;

(B) Texas Health and Safety Code §533.009, §576.005, §576.0055, §576.007, and §614.017;

(C) 45 CFR Parts 160 and 164; and

(D) 42 CFR Part 2;

(5) communication between the facility and the courts, including sharing final court competency determinations with the facility to comply with statutory reporting requirements; and

(6) coordination, communication, and response procedures for law enforcement when responding to incidents, emergencies, or calls for service at the facility.

§926.211. Report to the Texas Health and Human Services Commission.

Each facility must:

(1) collect and submit the following data in the format specified by HHSC and within the timeframe set by HHSC regarding individuals who received inpatient competency restoration services at the facility:

(A) the individual's country of origin;

(B) the individual's diagnosis;

(C) the number of individuals who received ICR services at the facility;

(D) the number of those individuals whose competency was restored as determined by the court;

(E) for individuals described in subparagraph (D) of this paragraph, the average number of calendar days the individuals received ICR services at the facility;

(F) the number of individuals whose competency was restored as determined by the court after the individual received services at the facility for not more than 60 calendar days;

(G) the number of individuals for whom the facility requested an extension per CCP Article 46B.079(d);

(H) the number of individuals whose competency was not restored as determined by the court and who were transferred to an inpatient mental health facility or to a residential care facility;

(I) for individuals described in subparagraph (H) of this paragraph, the average number of calendar days between the date the court determined that the individual has not attained competency and the date the individual was transferred to an inpatient mental health facility or to a residential care facility; and

(2) submit the data required in paragraph (1)(A) - (I) of this section separately for individuals charged with a misdemeanor and individuals charged with a felony offense.

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

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Karen Ray
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 291. SERVICES AND ACTIVITIES

37 TAC §291.2

The Texas Commission on Jail Standards (TCJS) proposes an amendment to rule §291.2 Inmate Correspondence Plan regarding electronic correspondence in county jails. The proposed rule adds language to 37 TAC §291.2 that includes electronic correspondence. This language is proposed following a recommendation by the TCJS Administrative Rules Advisory Committee (ARAC). The TCJS ARAC recommended publication of this amendment, for public comment, to the Commission.

Ricky Armstrong, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing this rule for the first five-year period. There are no estimated additional costs for state and local government, no estimated loss or increase in revenue to the state or local governments and enforcing or administering this rule has no foreseeable implications relating to costs or revenues of state or local government.

Ricky Armstrong, Executive Director, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing this amended rule will be ensured compliance with correspondence standards in facilities that use electronic correspondence. There will not be an effect on small businesses, microbusinesses, rural communities or persons. There are no additional costs incurred by those regulated by this rule.

Ricky Armstrong, Executive Director, has determined that for each year of the first five-years the rule is in effect the rule will not create or eliminate a government program, create or eliminate existing employee positions, and does not increase or decrease future legislative appropriations to the agency. The rule does not increase or decrease fees paid to the agency. This rule would expand current regulation. The rule does not increase or decrease the number of individuals subject to the rules applicability. The rule does not affect the state's economy.

Comments on the proposal may be submitted in writing to Richard Morgan, Research Specialist, at P.O. Box 12985, Austin, Texas 78711-2985, or by email at richard.morgan@tcjs.state.tx.us.

This amended rule is proposed under the authority of Government Code, Chapter 511, which authorizes the TCJS to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This rule change does not affect other rules or statutes.

§291.2. Inmate Correspondence Plan.

Each facility shall have and implement a written plan, approved by the Commission, governing inmate correspondence, including electronic correspondence. The plan shall provide for the handling of privileged and nonprivileged correspondence, both outgoing and incoming, and shall provide for the collection and distribution of correspondence.

(1) General Requirements.

(A) Inmates shall be permitted to send as many letters of as many pages as they desire, to whomever they desire. Inmate to inmate correspondence may be prohibited where legitimate penological interest exists.

(B) Inmates may receive correspondence in any quantity, amount, and number of pages.

(C) Inmates shall be allowed to retain writing materials, stamps, and correspondence in reasonable amounts.

(D) If requested, indigent inmates shall be furnished a reasonable amount of paper, pencils, envelopes, and stamps to correspond with their attorney(s) and the courts. Additionally, indigent inmates shall be furnished paper, pencils, envelopes, and stamps to post at least three letters a week for all other correspondence. A negative balance may be maintained on the inmate's commissary account for indigent postage and correspondence supplies.

(E) Correspondence may be rejected on a case by case basis, provided it is a violation of the inmate rules. For purposes of this plan such correspondence is defined as:

(i) containing information regarding the manufacture of explosives, weapons, or drugs;

(ii) containing material that a reasonable person would construe as written solely for the purpose of communicating information designed to achieve the breakdown of jails through inmate disruption such as strikes or riots; and

(iii) a specific factual determination has been made that the publication is detrimental to inmate's rehabilitation because it would encourage deviate criminal sexual behavior.

(2) Privileged Correspondence.

(A) Correspondence addressed to or received from the following persons or organizations shall be considered privileged correspondence:

(i) officials of the federal, state, and local courts;

(ii) all federal officials and officers, including the President of the United States;

(iii) state officials and officers, including the Texas Commission on Jail Standards and the Governor;

(iv) letters to bona fide news media; and

(v) the inmate's attorney(s).

(B) Outgoing correspondence addressed to the persons listed in subparagraph (A) of this paragraph shall not be opened or interfered with unless a search warrant is obtained.

(C) Incoming correspondence from correspondents listed in subparagraph (A) of this paragraph shall be opened only in the presence of the inmate with inspection limited to locating contraband. Whenever jail officials have probable cause to suspect that the incoming letter is part of an attempt to formulate, devise or otherwise effectuate a plan to escape from the jail, or to violate state or federal laws, officials shall obtain a search warrant prior to opening and reading the correspondence of the individual involved.

(3) Nonprivileged Correspondence.

(A) Mail addressed to or received from persons or organizations not listed in paragraph (2)(A) of this section shall be considered nonprivileged correspondence.

(B) Outgoing correspondence may be opened and read. Correspondence may be censored provided a legitimate penological interest exists. A copy of the original correspondence should be retained.

(C) Incoming correspondence may be opened and read. Correspondence may be censored provided a legitimate penological interest exists. A copy of the original correspondence should be retained. If contraband is discovered, it shall be confiscated and the inmate advised of the action.

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

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Ricky Armstrong
Executive Director
Texas Commission on Jail Standards
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